

Beyond rights: developing a conceptual framework for understanding access to coastal resources at Ebenhaeser and Covie, Western Cape, South Africa

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DECLARATION

I declare that “Beyond rights: developing a conceptual framework for understanding access to coastal resources at Ebenhaeser and Covie, Western Cape, South Africa” is my own work, that it has not been submitted for any degree or examination in any other university and that all sources I have used or quoted have been indicated and acknowledged by complete references.

Samantha Williams

April 2013

Signed

Supervisor: Associate Professor Merle Sowman (University of Cape Town, South Africa);

Co-supervisor: Professor Ton Dietz (African Studies Centre, Leiden, The Netherlands).

DEDICATION

To the communities of Covie and Ebenhaeser and the many fishers who have lost their lives at sea.

Velore en Verlate

In 'n klein ou kus plekkie, genoem Soutrivier,
Al eeue lank het die mense daar geleef en plesier,
Waar die vissers gewoon het was genoem die Rug,
Maar is vandag nog net 'n groot, groot sug,
Op 'n mooie, vroeë môre,
Besluit die manne om vir hul gesinne te gan sorge,
Hulle vat toe hul gereedskap en die boot,
En gou-gou het hulle gaan afstoot,
Hulle het toe die diep-see ingevaar,
Maar het nie veel daar gewaar,
Die wind het te gou begin waai,
En hulle nog in die rigting van Plettenbergbaai,
Die skipper het beveel om die seil te steek,
Want almal het geleer en het geweet,
Maar tot almal se onsteltenis,
Was dit toé hulle laaste verbindtenis,
Sy doel was om gou die wal te haal,
In sy begeerte het hy heeltemal gevaal,
Die seil was nooit weer afgehaal,
En het die boot toe maar omgeslaan,
Een van die bemanning het die ramp oorleef,
Hy was beseer, angstig en bevrees,
Want om so 'n leeftyd te benader,
Was net die genade van die Liewe Vader,
Vrou en kinders het gesoek en geweene,
Hul gelukkige lewe was nou daarmee heen,
Hulle geliefdes het baie mooi vir hul gesinne gesorg,
Maar is nou vir altyd vir hulle 'n ander môre,
Dit was die vierde dag van Mei neentien drie-en-vyftig,
Almal was nog mooi, fiks en fluitig,
Maar na al hierdie tragiese gebeure,
Was dit die toe-sluit,
Van byna almal se deure.

Irene Barnado

ABSTRACT

Beyond rights: developing a conceptual framework for understanding access to coastal resources at Ebenhaeser and Covie, Western Cape, South Africa

Samantha Williams

Within the context of small-scale fisheries, increased claims and demands made for access, as well as fisheries governance processes, this thesis examines local resources users' access to fisheries resources. The study identifies and analyses various mechanisms harnessed to maintain access to fisheries resources, as well as the various strategies put forward to make claims for access. In the property literature, where access has predominantly featured, the main focus has been on the role of rights and economic benefits, with limited attention paid to the wider social dynamics and governance processes associated with access to fisheries resources. This study draws on an alternative view of access—specifically, that popularised by Ribot and Peluso (2003) in their access theory. Here, it is emphasised that studying access becomes a wider investigation into the many social means, processes and relations, or 'mechanisms', by which actors are able to benefit from access to natural resources. Two rural traditional fisher communities, Ebenhaeser and Covie in the Western Cape of South Africa, served as the study sites, providing two examples where access to fisheries resources and associated governance are identified and analysed. The overall aim of this study was to develop a conceptual framework for understanding access to fisheries resources by drawing on experiences in South Africa.

The findings from the research have emphasised the need to look beyond notions of formal rights and to consider the range of mechanisms harnessed to gain, maintain and claim access. An understanding of access in small-scale fisheries emphasises attention to rights-based (direct) and structural and relational (indirect) mechanisms of access. By drawing on empirical evidence and literature, and by developing and applying a conceptual framework to two case studies, a range of key mechanisms were identified and analysed and the role of governance was highlighted as a key process influencing access mechanisms. The conceptual framework further emphasise that governance is not only made up of government or management, but that various institutions, policy frameworks, actors and processes all influence local users' abilities to benefit and make claims to access fisheries resources. This work has contributed to the alternative view of access by identifying mechanisms of access as well as governance processes which are important to understanding a fishery system and the livelihoods that depend on fisheries resources. The identification and analysis of these mechanisms employed by local resource users will facilitate more holistic approaches to understanding and analysing access, and inform the management of small-scale fisheries.

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LIST OF ABBREVIATIONS

| | |
|------------------------|---|
| ANC | African National Congress |
| BSSK | <i>Binnelandse Zending Sub-Commissie van de Nederduitse Gereformeerde Kerk in Zuid-Afrika</i> |
| C.A.P.E | Cape Action for People and the Environment |
| CBD | Convention on Biological Diversity |
| CBO | Community-based organisation |
| CDLAP | Community Development Land Acquisition Plan |
| CEC | Committee for Environmental Coordination |
| CPA | Communal Property Association |
| CPRC | Coloured Persons Representative Council |
| CRLR | Commission on Restitution of Land Rights |
| DAFF | Department of Agriculture, Forestry and Fisheries |
| DEA | Department of Environmental Affairs |
| DEAT | Department of Environmental Affairs and Tourism |
| DLA | Department of Land Affairs |
| DRDLR | Ministry of Rural Development and Land Reform (DRDLR) |
| EEU | Environmental Evaluation Unit |
| ESTA | Extension of Security Tenure Act |
| FAO | Food and Agricultural Organization |
| FPDC | Fisheries Policy Development Committee |
| GEAR | Growth Employment and Redistribution |
| HDI | Historically disadvantaged individual |
| ICMA | Integrated Coastal Management Act |
| IRP | Interim Relief Permit |
| ITQ | Individual Transferable Quota |
| IUCN | International Union for Conservation of Nature |
| <i>L. richardsonii</i> | <i>Liza richardsonii</i> |
| LCC | Land Claims Commission |
| LRC | Legal Resources Centre |
| LRAD | Land Redistribution for Agricultural Development |
| LRP | Land Reform Programme |
| LTA | Land Reform (Labour Tenants) Act |
| MCM | Marine and Coastal Management |
| MDGs | Millennium Development Goals |

| | |
|-----------|--|
| MDT | Masifundise Development Trust |
| MLRA | Marine Living Resources Act |
| MOU | Memorandum of Understanding |
| NBA | National Biodiversity Assessment |
| NBF | National Biodiversity Framework |
| NBSAP | National Biodiversity Strategy and Action Plan |
| NEM: BA | National Environmental Management: Biodiversity Act |
| NEM: ICMA | National Environmental Management: Integrated Coastal Management Act |
| NEM: PAA | National Environmental Management: Protected Areas Act |
| NEMA | National Environmental Management Act |
| NEPAD | New Partnership for Africa's Development |
| NFA | National Forestry Act |
| NGO | Non-governmental organisation |
| OEMP | Olifants Estuary Management Plan |
| OVV | <i>Olifantsrivier Vissers Vereeniging</i> |
| PAA | Protected Areas Act |
| RDP | Reconstruction and Development Program |
| RMS | Rhenish Missionary Society |
| SADC | Southern African Development Community |
| SANParks | South African National Parks |
| SCLC | Southern Cape Land Claims Commission |
| SFTG | Subsistence Fisheries Task Group |
| SKKLRF | Southern Cape and Karoo Land Restitution Forum |
| SLAG | Settlement/Land Acquisition Grant |
| SSFP | Small-Scale Fisheries Policy |
| TAC | Total allowable catch |
| TEK | Traditional ecological knowledge |
| TNP | Tsitsikamma National Park |
| TOC | Tragedy of the commons |
| TPCs | Thresholds of potential concern |
| UN | United Nations |
| UNEP | United Nations Environment Program |
| WHO | World Health Organization |
| WSSD | World Summit on Sustainable Development |

LIST OF SPECIES (CITED IN TEXT)

| <u>Local name (Afrikaans)</u> | <u>English</u> | <u>Scientific name</u> |
|--------------------------------------|--------------------------------|-------------------------------|
| <i>Harder/ 'Bokkom'</i> (when dried) | Southern mullet | <i>Liza richardsonii</i> |
| <i>Barber</i> | White barbel | <i>Galeichthys feliceps</i> |
| <i>Moggel</i> | Carp | <i>Labeo Umbratus</i> |
| <i>Sandvis</i> | Bartail flathead | <i>Platycephalus indicus</i> |
| <i>Kreef</i> | <i>West-coast Rock lobster</i> | <i>Jasus lalandii</i> |
| <i>Bodem vis</i> | - | - |
| <i>Geelbek</i> | Geelbeck croaker | <i>Atractoscion aequidens</i> |
| <i>Silvervis</i> | Silverfish | <i>Argyrozona argyrozona</i> |
| <i>Makriel</i> | Chub mackerel | <i>Scomber scombrus</i> |
| <i>Stokvis</i> | Cape hake | <i>Merluccius paradoxus</i> |
| <i>Red roman</i> | Roman seabream | <i>Chrysoblephus laticeps</i> |
| <i>Galjoen</i> | Galjoen | <i>Dichistius capensis</i> |
| <i>Elf</i> | Bluefish | <i>Pomatomus saltatrix</i> |
| <i>Leervis</i> | Leerfish | <i>Lichia amia</i> |
| <i>Perlemoen</i> | Abalone | <i>Haliotis midae</i> |

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While every single PhD journey is different for those who embark on it, one commonly held perception is that it is indeed a very lonely journey. I would disagree somewhat. It is when sitting down, writing this personal tribute that one realises that there are people who have walked with you along the journey and therefore need special mention. I would like to start by thanking the people of Ebenhaeser, Papendorp and Covie. I have been working closely with the fishing communities of Ebenhaeser and Papendorp since 2005; there have been laughs, tragedies, battles fought and friendships established along the way that I am sure will continue long after this PhD! Special thanks needs to be extended to all the families at Olifantsdrift, Hopland, Nuwepos and Papendorp, where I received very warm welcomes at all of the homes that I entered, and experienced the willingness of all community members to assist with or participate in this research. To Aunty Saartjie, the late Aunty Rosie, Jenny, Siena, Charmaine, Geraldine, Salvester, Nico Waldeck, the late Oom Pieter Cloete and Oubaas, Oom Sekkie Afrika, Oom Hansie Don, Petrus Koordom, and the many other fishers: *'Dankie'*! My experience and time spent during 2009 and 2010 in Covie in the Tsitsikamma was special and the late Aunty Irene Barnado played a huge role in making sure that I was comfortable. She introduced me to as many people as possible, and shared the wonderful and beautiful memories that she had of Covie (always over a cup of tea). Special thanks need to be extended to Michael and Clive Alexander and Kenwyn Barnado who joined me on walks, pointing out historical fishing sites and assisting with fieldwork. Many names are not mentioned here, but without the people of these two very special communities, I could not have completed my research. I hope that the end of this thesis marks the beginning of many more opportunities to work together. *'Dankie aan julle almal'*!

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My final words are to my Creator, thank you...

1.1 INTRODUCTION

Across the world, the demand for access to and the use of natural resources is increasing. Some of the factors responsible for this include distinct economic, production and socio-economic demands, increasing claims made for access to natural resources, as well as socio-cultural, political and conservation values, among others (Giller *et al.* 2008; Shackleton *et al.* 2000; Schlager & Ostrom 1992). It is widely recognised that poor and/or rural people rely heavily on natural resources for, *inter alia*, food, jobs, income generation, medicine, fuel wood and building materials, as these contribute towards livelihood activities (Agardy *et al.* 2005; Wilson *et al.* 2004; Leach *et al.* 1999). Apart from the most direct benefits that natural resources provide, the host of intangible social benefits, including cultural and spiritual values, which are not easily quantifiable, are deeply entrenched in the way of life and identity of many people who depend in part or wholly on natural resources for their livelihoods (Wilson *et al.* 2004; Jentoft 2003). This ‘intrinsic’ value attached to natural resource use, according to Stevens (1997), is not only important for overall wellbeing, but also for cultural survival.

In Africa, access to and the use of natural resources – including water, land, forest (including non-timber products), fisheries and wildlife resources, to name a few – play a fundamental role in the livelihoods of poor and rural people (Nelson 2010; Béné 2008; Fabricius & Koch 2004). The World Health Organization (WHO) estimated in 2009 that 80% of people in Africa rely on natural resources from their environment for their primary healthcare (Tchacondo *et al.* 2012; Roe 2008). Drawing on various studies, Timko *et al.* (2010) estimated that over two-thirds of Africa’s inhabitants rely on forest products, either for subsistence or some form of income generation. In many instances, natural resources are used to supplement various other livelihood activities, and thus serve as an important safety net in times of environmental stress or economic crises, consequently reducing vulnerability and risk (Shackleton & Shackleton 2004; Béné 2003; Cousins 1999).

Reliance on natural resource use constitutes the foundations of many countries’ economies. In Africa, for instance, revenues from inland and marine fisheries are estimated to contribute towards the income of over 10 million people engaged in production, processing and trade (Béné and Heck 2005; Pauly *et al.* 2002). Furthermore, in many developing coastal regions on the African continent, fish is generally considered as a cheap form of protein and is readily accessible to the poorer sectors of society (Kraan 2009). The importance of the fisheries sector in Southern Africa is evident: 2003 estimates indicate that the sector saw approximately 1.5 million people employed in the region, with roughly 5.5 million dependent on fisheries resources for their livelihoods (DEAT 2006).

While the fisheries sector provides food security, supports economic and livelihood activities, and represents social and cultural value for millions in Africa and worldwide, reports and statistics on the sector paint a gloomy picture (Smith *et al.* 2010; Worm *et al.* 2006; Pauly & Watson 2003; Pauly *et al.* 1998). Alarming, in a recent report by the United Nations Food and Agricultural Organization (FAO), it was suggested that most of the fish stocks of the top ten species, accounting for approximately 30% of the world's marine capture-fisheries production in terms of quantity, are fully exploited (FAO 2010:8). This poses serious implications for the livelihoods and food security of those dependent on these stocks.

'Subsistence' and small-scale fisher communities are projected to be the hardest hit by uncertainties and changes in access to fisheries resources. A prominent feature of such communities is the often precarious living and working conditions that they face (Mills *et al.* 2011; Béné 2008; Béné 2003; Pomeroy *et al.* 2001), which make them highly vulnerable to shocks or changes. Poverty, therefore, remains widespread for millions of fisher people, especially in the developing world (Evans & Andrew 2011; Jentoft & Eide 2011; Béné 2008). Estimates indicate that small-scale fisheries contribute to more than half of the world's marine and inland fish catches, employ more than 90% of the world's 35 million capture fishers and support another 84 million people employed in jobs associated with fish processing, distribution and marketing (FAO 2010:10). Furthermore, there are millions in rural fisher communities, particularly in Asia and Africa, who are involved in subsistence, seasonal or occasional fishing activities, with few alternative sources of income, employment or food security (Allison & Ellis 2001; Berkes *et al.* 2001). For the many livelihoods in these fisher communities, maintaining access to fisheries resources remains key to securing and deriving benefits.

In South Africa, the country of focus of this research, access to natural resources cannot be understood without first acknowledging the historical processes that have shaped the manner in which natural resources are acquired, distributed, used and managed. Secondly, and of equal importance, is an analysis of how various political and legal processes introduced post-apartheid have aimed to promote fair and equitable access to these resources. Historically, various discriminative policies and processes have resulted in the marginalisation, dispossession and exclusion of many local people from natural resources and the resource-rich areas that they once occupied and utilised, and which contributed to sustaining their livelihoods (Wynberg & Sowman 2007; Fabricius & Koch 2004; Wynberg & Kepe 1999; Ramphela & McDowell 1991). Many of these measures were forcibly imposed on individuals and communities, resulting in the loss of agricultural land, and the loss of access to forest, coastal and fisheries resources, and so on. King (2007) notes that some of these imposed and drastic measures occurred to make way for various conservation objectives that took precedent over community livelihoods.

Some of the key objectives embarked upon by the new democratic government of South Africa were to address past injustices, restore rights to land, and ensure fair and equitable access to natural resources. Years of dispossession and inequality called for massive reforms in society and in the policy environment to ensure that human rights in this regard were upheld (Du Toit 2013; Hart 2012; Jacobs & Makaudze 2012; Witbooi 2006). The Constitution of South Africa and various other policies and laws – such as the National Environmental Management Act (NEMA) (Act 107 of 1998), The Marine Living Resources Act (MLRA) (Act 18 of 1998), The Integrated Coastal Management Act (ICMA) (Act 24 of 2008), The Restitution Land Rights Act (Act 22 of 1994) and The National Forestry Act (NFA) (Act 84 of 1998) (Government of the Republic of South Africa 1994a; 1998a-c; 2008a) – seek to address past injustices and acknowledge these rights. The Land Reform Programme (LRP) in South Africa has probably been the most ambitious in terms of securing redress through policy objectives and programmes (Cousins 2009; Ntsebeza & Hall 2007). These objectives include securing restitution of dispossessed land, large-scale redistribution of land, and tenure reform to secure and strengthen the land rights of people (Claassens & Cousins 2008; Lahiff 2007; Ntsebeza 2006). While the intentions of various policies and redress programmes may be clear in seeking to remedy past injustices, experience has shown that their implementation has been challenging and slow (Walker *et al.* 2010; Reed & De Wit 2003). Consequently, discontent has arisen – observed, for example, in protest, mass action and legal litigation¹ – where individuals and communities have proceeded to challenge the State.

There have been various challenges in the implementation of the suite of new and post-apartheid policies aimed at ensuring equity and redress; not least, the structural and institutional transformation required to give effect to these new policies. In this study it is asserted that the process of resource access is complex, especially in the South African context, where access to natural resources is embedded in historically discordant practices and processes.

South Africa's fisheries sector bears example of the complex nature of natural resource use, distribution and management in the country. Historically, the sector was neglected in fisheries discourses, policy and management (Isaacs 2012; Sowman 2011; Hara & Raakjaer 2009) as it was dominated by a few large-scale white-owned enterprises during the country's apartheid era. Access to resources for blacks² and coastal fisher communities was predominantly via employment in the industrial sector or by means of gaining access through recreational or resource-use permits (Cardoso *et al.* 2005; van Sittert 1992). Despite these restrictions, however, many individuals and communities

¹ See: K. George and others v. the State (further discussion in *Chapter Four*, with examples of where protest and legal litigation have been brought against the responsible minister in the fisheries sector); and Constitutional court order in the case of the Richtersveld Community and others v. mining company Alexkor Ltd (2003) to have land rights restored to the community.

² In the South African context, the term 'black' includes people of black African, coloured or Indian descent.

along the coast of South Africa have been involved in informal subsistence and small-scale fishing activities for decades (van Sittert 2003; Clarke *et al.* 2002). These activities, which do not involve large fiscal investments or operations, typically see small-scale fishers harvesting fisheries resources for household consumption and for limited sale to local markets. After democratisation, and with the development of new legislation in South Africa, subsistence fishers were recognised as a formal sector for the first time (Harris *et al.* 2002).

Despite recognition of this sector, little information was available about coastal fishers in terms of what and where they harvested, the nature of their communities, and their livelihoods. In broad terms, this recognition confirmed that there was a great deal of poverty in the disadvantaged fishing communities and that transformation in the industry was urgently required (Sunde 2003); specifically, it was recognised that subsistence fishers needed to be accommodated in new policy developments. In September 1993, a ‘Fishing Forum’ was established, comprising representatives from the various stakeholders such as the trade unions, large companies, the African National Congress (ANC) and the Department of Sea Fisheries (Johnston 2003). It was agreed that immediate steps were needed to address the poverty crisis in coastal fishing communities, and the new government promised “the upliftment of impoverished coastal communities through improved access to marine resources” (ANC 1994:104).

Since democratisation, a range of commissions, interim measures, rights allocations, policy developments, protests, legal litigation and negotiations have characterised the development of the small-scale fisheries sector in South Africa (Sowman 2011; Petersen 2008; Isaacs *et al.* 2007; Isaacs 2006; Sunde 2003). After five years of development, the Small-Scale Fisheries Policy (SSFP) was finalised in 2012 (DAFF 2012). This policy, like various other policy instruments, gives heed to the needs of small-scale fishers in South Africa, defines access rights, and recognises the unique character of this sector. While the development of a new policy signals change, there are still a myriad of challenges that the sector must overcome. Key to these challenges, as contended in this study, are: (i) the issue of access, (ii) rights (which include aspects related to customary and historical use), (iii) governing processes, and (iv) expectations and socio-economic demands – which must be balanced against resource availability and sustainability criteria.

1.2 CONTEXTUALISING KEY CONCEPTS IN THE STUDY: ACCESS, SMALL-SCALE FISHER COMMUNITY AND LIVELIHOODS

Prior to unpacking the specific study objectives, it is necessary to define how access, (traditional) small-scale fishers and livelihoods are comprehended in the context of this study.

1.2.1 ‘Access’

Traditionally, access (to natural resources) has theoretically been understood in terms of property rights to resources. Schlager and Ostrom (1992) add rules to this understanding, underscoring rights and rules (based on law, custom and convention) when analysing the use and management of natural resources. They define *de jure* property rights as the formal legal rights enforced by formal legal authorities and *de facto* rights as those based on rules made among resource users (i.e. *de facto* as they not recognised by government authorities). However, Ribot (1998) notes that by focusing only on rights, Schlager and Ostrom’s view overlooks the analysis of structural and relational forces shaping resource use. These forces described by Ribot are being popularised in an alternative interpretation of resource access that is fast gaining acceptance, especially in natural resource management discourses.

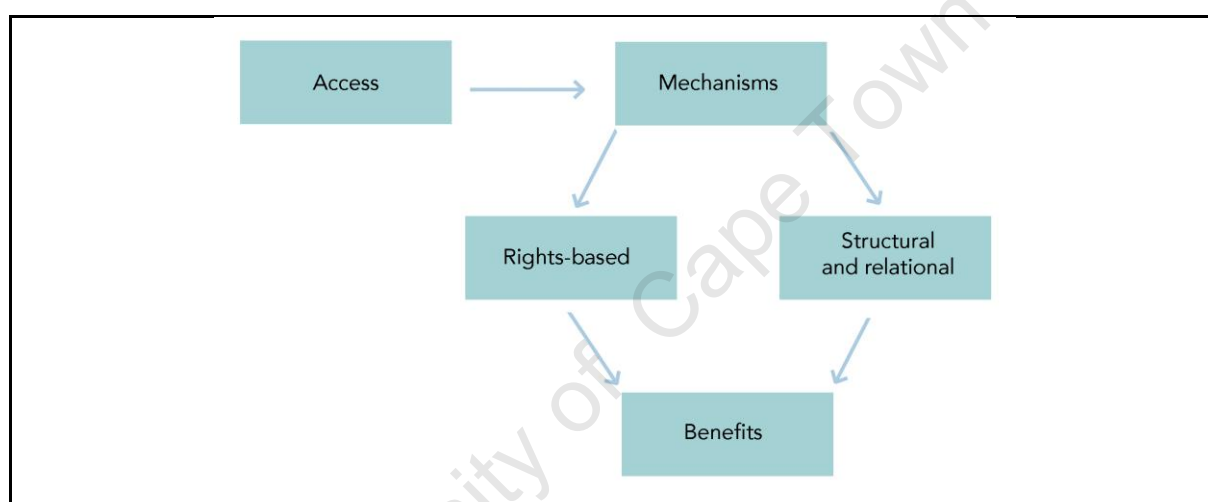


Figure 1. Interpretation of Ribot and Peluso’s (2003) access framework.

In Ribot and Peluso’s (2003) ‘Theory of Access’ (see interpretation in Figure 1), the authors shift away from commonly held notions of access. They argue that, in property theory, access is defined as the *right* to benefit from things; while in their definition, access is seen as the *ability* to benefit from things³ (Ribot & Peluso 2003). They support this differentiation by highlighting that: “Someone might have rights to benefit from land but may be unable to do so without access to labour or capital. This would be an instance of having property (the right to benefit) without access (the ability to benefit)” (Ribot & Peluso 2003:157). In this example, labour and capital would be considered as the structural and relational factors that enable abilities and, hence, allow benefits to be derived. Ribot and Peluso draw attention to these ability-enabling factors and maintain that “access remains empirical”, with focus on *who* gets to use *what*, in *which* ways and *when*. This conceptualisation of access maintains that people are able to gain and benefit from natural resources through ‘direct’ (rights-based) and ‘indirect’ (structural and relational) elements of access. The ‘direct’ element, or physical access

³ ‘Things’ include natural resources (Ribot & Peluso 2003).

through property rights or extra-legal measures, is seen as the first level of an ability to benefit from a resource. The ‘indirect’ elements – including knowledge, technology, capital, labour, markets, authority, identity and social relations – constitute the second level of abilities that can be harnessed to facilitate access.

While Ribot and Peluso’s (2003) articulation of access has emphasised the abilities that play a role in resource access, Sen (1981) offers another notion of understanding access in his entitlements approach. Although the latter was initially rooted in understanding why famine occurs in situations of moderate food availability, this model has been adopted by many studies for the analysis of environmental entitlements (Leach *et al.* 1999; Kepe 1997; Dietz 1996). According to Sen, the term ‘entitlements’ does not only refer to rights (i.e. what people should have), but also to the range of possibilities that people can have; in essence, representing “the set of alternative commodity bundles that a person can command in a society using the totality of rights and opportunities that he or she faces” (Sen 1984:497). Entitlements therefore come about through a process whereby individual endowment – a person’s “initial ownership” such as land or labour – is transformed into a set of entitlements (Leach *et al.* 1999). Accordingly, individuals may have access to natural resources via group membership, but if they do not possess the labour, for instance, to transform these into entitlements, then they may not be able to benefit from their endowments. Entitlements are therefore “the outcome of negotiations among social actors, involving power relationships and debates over meaning, rather than simply being the result of fixed moral rules encoded in law” (Leach *et al.* 1999:235). Sen’s concern was to highlight how different people gain entitlements from their endowments and so improve wellbeing or capabilities, which aligns with Ribot and Peluso’s (2003) theory of access. In applying the underlying ideas of Ribot and Peluso’s (2003) access theory, the aim of the current study, with its focus on small-scale fisheries, was to demonstrate how local resource users are able to benefit from access through a range of mechanisms harnessed or drawn on to gain and maintain access. In this thesis, the factors that strengthen these access mechanisms will become apparent and the challenges that local resource users and their communities face in employing these mechanisms of access will be demonstrated.

1.2.2 Small-scale fisher community

While the use of the term ‘traditional fishing community’ has at times been used to imply a homogenous group or romanticised notion of a coherent entity, these communities, like any other, have their own peculiar social dynamics and divisions (Petersen 2008; Kepe 1998). However, the term ‘fishing community’ is used internationally and locally and has a cultural dimension (Petersen 2008). In the current study, use of the term ‘small-scale fisher community’ is applied and encompasses local resource users who are distinguished from their large-scale commercial

counterparts in terms of their fishing activities being less capital intensive, requiring low inputs of technology and labour as well and carried out in combination with other livelihood activities (Sowman 2011). Small-scale fishing communities in South Africa, despite limited recognition in the fisheries sector historically, still retain a degree of character and identity based on their livelihood activities; therefore, the term ‘small-scale fisher community’ is relevant and acknowledged in the newly promulgated Small-Scale Fisheries Policy (2012).

1.2.3 Livelihoods

Small-scale fisher livelihoods in South Africa share similar characteristics with their international counterparts; therefore, it would be useful to clarify the manner in which livelihoods are understood here. Livelihoods can be seen as comprised of various activities, assets, relationships and mechanisms employed by people (individuals and groups) to make a living and enable food security (Allison & Ellis 2001). Chambers and Conway (1992) note that livelihoods include assets, both material and social, as well as capabilities that are mediated through economic, political and institutional contexts. A key aspect of livelihoods is their diverse and complex nature (Carter & May 1999). A *livelihoods approach* – adopted in a range of fields as a tool to understand livelihood assets, strategies and outcomes of poor, resource-dependent communities – recognises that people (especially those dependent on natural resources) utilise a range of strategies to create an income and secure wellbeing (Chambers 1997; Allison & Ellis 2001). This approach aims “to identify what the poor have rather than what they do not have and to strengthen people’s own inventive solutions, rather than block or undermine them” (Allison & Ellis 2001:378). This is exemplified in some fisher communities, for instance, where fishing activities are combined with small-scale agriculture or livestock farming and seasonal work, if the opportunity exists.

While a livelihoods approach may be useful for studying poverty-environment relationships as well as the various strategies employed by people to secure food, economic and overall wellbeing, it does not provide information on the factors and processes (or mechanisms) that enable people to gain access to benefits in the first instance. Instead, to highlight which mechanisms local resource users employ in small-scale fisheries to gain and maintain access to fisheries resources, a preliminary conceptual framework was applied in this study, informed by Ribot and Peluso’s (2003) notion of access and access analyses, as well as the theoretical underpinnings guiding the study. This preliminary conceptual framework is presented in *Chapter Two*.

1.3 OBJECTIVES OF THE STUDY

In order to better understand access mechanisms employed by local resource users in small-scale fisheries in South Africa, this study sought to identify, describe and analyse access mechanisms in two

case studies. Two rural communities with similar socio-economic characteristics were used as the primary source of empirical enquiry. In both communities there has been an evolution of patterns of resource access due to various historical and socio-political factors. Moreover, both communities are involved in land restitution claims and various other processes which could potentially affect access to natural resources, including fisheries, land and forest resources. As the South African context presents distinct challenges in terms of access to such resources, it is necessary to examine the historical and socio-political context in this regard.

The overall aim of this research was to develop a conceptual framework for understanding access (i.e. what abilities and mechanisms are drawn on to gain and maintain benefit from fisheries resources) in the context of small-scale fisheries in South Africa, and thereby contribute to the growing body of literature on access. Therefore, the key research question guiding this study is to understand how access to inshore and estuarine fishing in South Africa is gained and maintained by poor coastal communities and what key mechanisms and processes are employed to enable such access? More, specifically, the objectives of this research were to:

- Review and describe the background of access to fisheries resources by local resource users within the South African context;
- Examine and document the context of access (to coastal and fisheries resources) at each case study site, including the history of these fishery systems;
- Identify, describe and analyse the mechanisms of access that are harnessed in each case study site; determine how these are strengthened in order to maintain or claim access; and identify key mechanisms that enable access for local resource users which could provide a better understanding of the nature of access in small-scale fisheries in South Africa;
- Contribute to access theory by providing a conceptual framework for understanding and analysing access in small-scale fisheries in South Africa based on empirical research.

1.4 OUTLINE OF THE THESIS

CHAPTER ONE: This chapter has introduced the concept of access to natural resources, highlighting poor and rural people's dependence on these resources, as well as the importance of access for livelihoods, specifically in the context of fisheries. Processes that have shaped or affected access to natural resources in South Africa, in relation to the country's historical past, have briefly been defined and described. An account has been provided of how the issue of access to natural resources, including land and fisheries resources, has been addressed post-apartheid. Here, focus has been placed on the various challenges that post-apartheid policy and planning processes face in terms

of addressing past injustices, and how implementation of these has resulted in tensions and contestations. *Access* and *rights* to natural resources, especially those relevant to small-scale fisheries, have been identified as processes facing acute challenges in terms of livelihoods and management, and this warrants further investigation. Key definitions were provided for contextualising *access*, *small-scale fisheries* and *livelihoods* in the study, and the overall and specific objectives of the study were outlined.

CHAPTER TWO: The study's theoretical context is highlighted in *Chapter Two*. The theoretical underpinnings of access are provided and defined here, and emphasis is placed on how access is understood in the current study. The role of *property* and associated processes in access to natural resources is examined, as access is usually defined within property discourses. Secondly, the entitlement approach, i.e. Sen's (1981) theory of access, is described. This is provided because the alternative view of access provided by Ribot and Peluso (2003) – which this study draws on – shares similar characteristics in its approach to understanding resource access. Ribot and Peluso's approach allows analysis of the processes or *mechanisms of access*, which include, but are not limited to, property relations. The chapter is concluded with the presentation of a preliminary conceptual framework intended to guide the study; further development of the framework follows to enable an understanding of local resource users' access to fisheries resources.

CHAPTER THREE: In *Chapter Three*, the researcher, the research approach and the methods employed in this study are introduced. The study's approach is defined and motivation is provided for the *research methods and tools* selected for data collection and analysis. *Ethical considerations* are discussed here, together with the manner in which these are addressed in the study.

CHAPTER FOUR: Here, three bodies of literature are discussed: First, historical and contemporary natural *resource use and management in South Africa* are described, as well as the various international protocols that affect environmental *governance* in the country. Second, key post-apartheid *legal mechanisms* are presented which aim to redress, ensure equity and greater access to natural resources through environmental policy and land reform processes. Finally, a discussion on these *reform processes* is provided to contextualise the empirical chapters that follow.

CHAPTER FIVE: This chapter serves to introduce the background and context of the case study sites, *Ebenhaeser* and *Covie*. The chapter commences with an historical account of each area; processes are highlighted that have influenced/played a significant role in access to natural resources, including land. This context is necessary as it provides the earliest and clearest markers of tracing resource access and use, thereby helping to demarcate the study. Here, secondary literature is drawn on as well as primary research that emanated from empirical work.

CHAPTER SIX: Results that emanated from the *Ebenhaeser case study* are presented in this chapter. By drawing on the preliminary conceptual framework (*Chapter Two*) as a guide, *Chapter Six* serves to highlight that *access comprises rights as a range of mechanisms and processes that assist in gaining and maintaining access*. First, governance processes are discussed to highlight the context in which access takes place, including the manner in which policy and management affect access. Second, by drawing on the preliminary conceptual framework, emphasis is placed on key access mechanisms that play a greater role in facilitating access.

CHAPTER SEVEN: Here a detailed description and analysis is provided of the mechanisms of access relevant to the *Covie case study*. This study site offers a slightly different account of access than provided in the preceding chapter: while both historical and contemporary access mechanisms are presented here, specific focus is given to the contemporary ‘informal’ access practices, which are more prominent.

CHAPTER EIGHT: This chapter serves to summarise the key issues that emerged in relation to the study’s objectives and its guiding theoretical underpinnings. A *revised conceptual framework* is presented for understanding access from the perspective of local resource users in small-scale fisheries. Of importance to this, a discussion follows regarding: the fundamental access mechanisms employed by local resource users; how identification of these may provide a better understanding of the various mechanisms employed for access in general; and how this may better inform the management of fisheries resources in small-scale fisheries in South Africa (and in other contexts where benefits are derived from natural resources).

CHAPTER NINE: The concluding chapter summarises key aspects of the aforementioned chapters and the outcomes of the study.

CHAPTER TWO

THEORETICAL ASPECTS OF ACCESS AND PRESENTATION OF A PRELIMINARY CONCEPTUAL FRAMEWORK

2.1 INTRODUCTION

Chapter One outlined that this study is concerned with access to natural resources; in particular, fisheries resources. When the term ‘access’ is used, it triggers obvious questions including access ‘to what?’, ‘by whom?’, ‘for what purposes?’ and ‘by what means?’. These signify a range of aspects to consider and, when applied in the context of natural resources, their responses would likely include: the resources (to what?), the users (by whom?), benefits of use (for what purposes?) and the various mechanisms and processes that facilitate or constrain access arrangements (by what means?). It is now well acknowledged in various discourses that poor people’s livelihoods depend on access to and the exploitation of various natural resources (Slater & Twyman 2003; Dobson 1999). Consequently, examining access to natural resources has been used predominantly to analyse poverty-reduction strategies and to demonstrate how access is linked to sustainable livelihood practices and outcomes (Norfolk 2004; Baumann 2002). In general, access has been used in discourses and studies on natural resources with little analysis beyond how rights enable or constrain access and the benefits that flow from such access. Thus, the focus has been on defining access as the *rights* users have or do not have to natural resources.

Various approaches have been applied to understand issues of access to natural resources and livelihood strategies, including the popular livelihoods approach, which has been adopted in the poverty-environment context. Conceptual approaches to understanding institutions and rights – many of which are shared across different fields of study – are some of the theoretical approaches applied (Leach *et al.* 1999; Schlager & Ostrom 1992; Bromley 1991). As the current study is primarily concerned with access to fisheries resources, property rights theory is relevant, as is the concept of entitlements; however, the main emphasis here is not on rights *per se* in seeking to understand access. In practical terms, in order to access fisheries resources there should be some form of acknowledgement that there is a legitimate basis for entry, as access is usually understood as a right of way (Sikor & Lund 2009). Access to natural resources has always been described and adjusted to fit property rights discourses, where access is either subjected to user rights or other property rights (Pronk & Evers 2007). A key omission, therefore, when focussing solely on rights, has been that the mechanisms employed to facilitate these rights (whether actual or perceived, or ultimately resulting in gaining or maintaining access) are not documented, explored or understood (Ribot & Peluso 2003).

In this study, the role of property rights in gaining access is acknowledged, but it is argued that other factors that influence access are fundamental in understanding access processes in relation to natural

resources and livelihoods. Here, by drawing on the property rights discourse, the role of property rights in access is highlighted, but recognition is given to the limitations to understanding access when reduced to property. This review and discussion of access as determined by property rights is necessary, as the property discourse has traditionally been the dominant approach through which access has been articulated. However, an alternative view of access, which is gaining acceptance in analyses on natural resources, allows a representation of other strategies and mechanisms that are important for gaining and maintaining access. This alternative view, articulated by Ribot and Peluso (2003), is presented and discussed in this chapter. The discussion that follows draws on this alternative notion of access to validate why it was adopted for this study, with emphasis on how this view differs from property theory's use of the concept of access. Key, here, is to stress that access analyses seek to demonstrate access by focussing on direct (rights based) and indirect (structural and relational) mechanisms of access.

However, before Ribot and Peluso's (2003) articulation of access is unpacked, a discussion on property and property rights regimes is provided. A key objection against the use of property as an analytical tool for natural resource analysis is that it is too restrictive, with various degrees of overlap within the property rights regimes. Accordingly, the concept of legal pluralism may become relevant. It is therefore necessary to explore the notions and theoretical ideas underlying legal pluralism, as these have bearing on how access is understood, and raise important questions for the management of natural resources and the governing system as a whole. Governance is a concept that is used increasingly in the natural resource management literature, and is seen to be more encompassing of the processes, institutional arrangements and interactions that take place to address resource management issues. Kooiman & Bavinck (2005) define governance as: "the whole of public as well as private interactions taken to solve societal problems and create societal opportunities. It includes the formulation and application of principles guiding those interactions and care for institutions that enable them" (Ibid: 17). Governance is thus concerned with interactions and processes that occur between a diverse group of actors, including non-state actors, in the process of addressing societal issues and needs – for instance, identifying who gains access to and derives benefits from resources.

The chapter then moves on to a section on entitlements (Sen 1981), which builds on ideas from property theory, but also examines why some individuals are, and others are not, able to benefit from resources. Drawing on Sen's (1981) work, Ribot and Peluso (2003) developed an access framework for understanding what they term 'access mechanisms' which allow users to derive benefits. The use of these access mechanisms has been important for the current study and for understanding access to fisheries resources in South Africa. According to Ribot & Peluso (2003), access mechanisms are important factors to consider and analyse in natural resource use and management. While the role of property is relevant in some cases, focus on different mechanisms merits attention.

The use of Ribot and Peluso's (2003) access theory has been key in informing the development of a preliminary conceptual framework for understanding access mechanisms and processes in two case study sites in South Africa. The development of this preliminary conceptual framework was central to the study: firstly, the framework contextualises how access was understood for this research; and secondly, it was applied to the two case studies and facilitated data collection. A brief discussion of the preliminary conceptual framework is provided in section 2.4 of this chapter.

2.2 UNDERSTANDING ACCESS: WHAT DOES PROPERTY HAVE TO DO WITH IT?

2.2.1 Property and property rights

In the literature, the dominant approach to theorising access has been in the property domains. Access to resources is usually understood in terms of property or the rights people hold to resources. The term 'property' itself has been defined by various theorists; some of the most noted and early definitions include that of Marx (1844), who defined property as: "appropriation in that it is the fact or act of obtaining through the alienation of other's labour embedded in material things" (Marx 1964).

Von Benda-Beckmann *et al.* (2006) notes that, simply stated, property is about relationships among social actors with regard to objects of value. Therefore, property relations involve various social actors, including individuals and collectives, who are linked to each other in social relationships, and property takes the form of 'enforceable claims' to some use or benefit of something (MacPherson 1978). Property relations are seen to exist at the level of laws and regulations, cultural norms and social values, actual social relationships and property practices (Sikor & Lund 2009).

In economic theory, the social relations of both physical and non-physical resources are seen to be included in the concept of rights and property rights (Fernández 2008). Stevenson (1991) notes that "whereas rights are relationships between persons, property rights are specifically relationships between persons regarding *use* of a thing – whether corporal or incorporeal". Property is seen as comprising rights and duties, both for holders and non-holders of property. Schlager and Ostrom (1992) add: "All rights have complementary duties. To possess a right implies that someone else has a commensurate duty to observe this right. Thus rules specify both rights and duties." If there are neither rights nor duties, then property does not exist in this context either (Stevenson 1991).

According to Schlager and Ostrom (1992) property rights refer to particular authorised actions: "Property right is the authority to undertake particular actions related to a specific domain" (pg. 250). However, rights should not be confused with rules; rather, they are the product of rules. Rules then "refer to the prescriptions that create authorisations", or "generally agreed-upon and enforced prescriptions that require, forbid, or permit specific actions for more than a single individual" (ibid).

Fernández (2008) concurs that where there is no property, and therefore no rights or duties, conditions for open access prevail. Property, whether common or private, entails rights for rights holders (these can be multiple or singular) and duties that are observed (Stevenson 1991:49).

A person's property rights are therefore characterised by a combination of rights, duties, liberties, powers, immunities and liabilities, which at the same time define how others are required, morally or legally, to behave in respect of the object of property (Fernández 2008). The categories that define the degree of ownership may include: right to possess; right to personal use; right to manage; right to income; powers to alienate; immunity from expropriation; power to bequeath; rights regarding term of ownership; duty not to use the property in ways harmful to others; liability (legal responsibility) to expropriation for unpaid debt; and rights and duties regarding reversion of lapsed ownership rights (Stevenson 1991). The extensive or limited nature of these rights depends on the property regimes that operate in a given society or community (Fernández 2008). Notably, these regimes can co-exist in a society. Bromley (1991) adds that by defining rights it is possible to specify the prerogatives that determine the rights and duties of the holder in the use of a natural resource.

2.2.2 Property rights regimes

Many property theorists, such as Berkes and Farvar (1989) and Bromley (1991), have popularised the four property rights regimes. According to Bromley (1991), property regimes can be viewed as authority systems; the emphasis of which is necessary because the essence of property rights is a structure of rights and duties that allows conditions for benefits to be acquired, and for protection against adverse claims. Meinzen-Dick and Pradhan (2002) maintain that, of the institutions that affect how people interact with natural resources, property rights regimes are among the most influential. Hara (2003) further adds that property rights regimes are supposed to perform certain functions with reference to a particular resource in a specific context. The four ideal analytical types of property regimes are presented in Table 1.

Table 1. The four ideal analytical types of property regimes (Adapted from Hara 2003, in Hauck & Sowman 2003)

| Property regime | Characteristics and assumptions |
|--|--|
| Non-property (<i>open access</i>) | Absence of property rights; Free for all; Resource is un-owned; Resource rights are left unassigned and are neither exclusive nor transferable. |
| Common property | Rights to the resource are assigned to an identified group of users who may exclude others from harvesting the resource and manage its use among group members; Rights to the resource are unlikely to be exclusive or transferable, and are of equal access and use within the group. |
| State property | Government regulates access to and utilisation of the resource; Individuals have the duty to observe use; Access rules are determined by the controlling agency. |
| Private property | Rights to the resource are held by an individual who manages the resource as he/she sees fit; Private property rights are usually recognised by the state and are exclusive and transferable. |

Private and common property have most widely been ascribed to problems of resource governance (Raymond & Olive 2008; Agrawal 2007; Swallow & Bromley 1995). While many writers on these two regimes advocate the advantages of each, some believe that the distinct boundaries between them are somewhat blurred and that common property is actually thought to be shared private property operating jointly or, more specifically, jointly owned private property (Lynch 1999, in Kepe 2008; McKean 1992). Of the four regimes, private and common property has been the most popularised property regimes described and analysed in the natural resource domains. According to Hardin's (1968) 'tragedy of the commons', it is assumed that common property provides incentives that encourage individuals to maximise their individual benefits from a resource, even in the face of over-exploitation. Historically, this fear of over-exploitation resulted in the argument that the most effective protection of natural resources required approaches such as state driven privatisation or limited/no access. This neo-liberal approach, Mansfield (2007) notes has been proposed and used to 'reduce capacity and rationalize' fishing industries and therefore utilized markets to manage the industry. However, Mansfield (2007) cautions that such approaches 'required massive and on-going regulation' and therefore may not be the panacea to certain common pool resource problems. Over the past 25 years a large body of social science, research is demonstrating that common property regimes do not necessarily lead to over-exploitation which would require denying access to individuals and groups, but that that groups can overcome their collective action problems and create institutions to manage their resources on a sustainable basis (Ostrom 1990; Berkes 1989; Bromley & Cernea 1989).

While evidence in favour of common property regimes has been highlighted, competition and concern for maintenance of environmental goods and services has reintroduced a multiplicity of stakeholder relations with different sources of legal rights. In contemporary societies, the multiple uses of these rights allow for co-existence and interaction between these regimes (Meinzen-Dick & Pradhan 2002). The presence of different legal systems, with regard to identical natural resources is referred to as legal pluralism. Legal pluralism highlights that legal orders do not exist in isolation, but that they influence each other and can change over time (Tamanaha 2008; Merry 1988). Barnes (2009) notes that debates about the justification of property are, in essence, about the consequences of excluding access to things; while certain aspects of these justifications may vary, contemporary institutions of property are, in reality, highly pluralistic, and this is reflected in the particular and specified kinds of property regimes.

2.2.3 Property and legal pluralism

To go beyond the various property regimes and rights it may be useful to start the property analysis off from a different point of view. In the legal anthropology discourse, for example, Meinzen-Dick and Pradhan (2002) point out that the starting point should be from the perspective of people's experience of access and control in which individuals draw upon a range of strategies to strengthen their argument. As highlighted above, in any situation of resource use, a number of different justifications will be put forward for a particular form of property right. While the property rights categories seem ideal, in practice, natural resources are often held in overlapping combinations of these regimes (Feeny *et al.* 1990). Legal pluralism, defined as the coexistence and interaction of multiple normative orders with different sources of legitimacy and authority (Meinzen-Dick & Pradhan 2002), is most often ascribed in these situations. Other definitions, including that of Bavinck (2005:811), note that legal pluralism can be viewed as "different legal mechanisms, applicable to identical situations". However, as Bavinck (2005) further adds, "legal pluralism is not just a body of rules and norms which people refer to, make use of or manipulate, but rules are seen to be backed up by organisational structures and by authorities who possess instruments such as sanctions for the design and enforcement of rules as well as for mediating disputes" (pg. 811). Legal pluralism should be seen as an attribute of a social group and not as law or a legal system (Von Benda-Beckmann 1983). The focus of enquiry should not be on the behaviour of law, but rather on the behaviour of people; pluralism acknowledges the existence of different bodies of law that operate in the same socio-political space and compete for the loyalty of a group of people subjected to them (Prill-Brett 1994). This means that different rules could be applied in the same situation; these could be redundant or in conflict with each other, and could see a situation arise where individuals risk or break one rule in favour of another (Jentoft *et al.* 2005).

Legal pluralism is thus an important concept, especially in understanding resource-related conflicts. As indicated by Bavinck (2005), a legal system possesses instruments, including sanctions for design, enforcement and dispute mediation. Bavinck contextualises this pluralist perspective by drawing on fisheries: “conflict becomes almost unavoidable when industrialised fishers and governments make use of the same sea spaces that older fishing populations do, though according to very different sets of rules and perspectives” (Bavinck 2005:817). The advantages of this perspective, Bavinck (2005) adds, draw attention to the fact that parties in such conflicts differ in terms of what belongs to whom, why, and who decides this, as they all reason from a different legal system.

It is therefore acknowledged that multiple legal and normative frameworks co-exist in most domains of social life and, in most social settings, more than one legal system becomes relevant (Meinzen-Dick & Pradhan 2002). Law is understood as cognitive and normative; thus, it is possible to have various kinds of laws, such as state, religious, customary or a range of local norms (which may include elements of other law), which operate and co-exist. The different normative and cognitive orders may be sharply distinguished in some contexts, but less distinguished in others; for example, in the everyday life of local resource users. At a local level, there may be a mixture of several normative orders that are based on long historical tradition, such as customary laws or forms of self-regulation. The assortment of such norms and rules that are expressed and used at a local level is called local law (Von Benda-Beckmann *et al.* 1997). Furthermore, these local laws may be nested within a state-driven legal framework.

It has been indicated that in situations of legal pluralism, individuals make use of more than one law or set of norms to rationalise and legitimise their decisions or behaviour. Spiertz (2000) notes that people will orient themselves based on factors such as expediency, local knowledge, perceived contexts of interaction and power relations within situations of legal pluralism. However, Meinzen-Dick & Pradhan (2002) add that the laws are only as strong as the institutions or collective that stands behind them. Thus, different legal orders should not be seen as isolated from one another, but as interacting with and influencing each other, and as mutually constitutive (Guillet 1998). Exactly how these different legal orders interact and influence each other depends largely on the power relationships between those ‘bearers’ of different law. This, Meinzen-Dick and Pradhan (2002) argue, can be seen in some contexts, especially that of state and local community relationships; state law is usually more powerful and used by state officials to enforce or declare certain resources as state property or to restrict access. Furthermore, “statutory law can also be used by powerful outsiders to claim resources in ways that are not locally recognized” (Meinzen-Dick & Pradhan 2002:4). Therefore, even though these legal orders co-exist, this does not mean that all laws are equal or equally powerful. Power relationships are therefore very important as they often determine the distribution and actualisation of rights (Meinzen-Dick & Pradhan 2002).

Thus, since access to fisheries resources involves drawing on various mechanisms, it would be important to locate these mechanisms within the broader governance framework governing a fishery. As a concept, governance is viewed as important in science and policy; however, in the fisheries discourse, it is being applied more often and used as a replacement to management (Kraan 2009). Therefore, understanding governance systems, processes and interactions relevant to a fishery is considered key to understanding how resources are used, distributed and managed.

2.2.4 Access to fisheries resources: Governance processes and interactions

Governance has become a term in both policy and practice, and has been used predominantly to stress the role and interactions of state and non-state actors in addressing societal and environmental issues (Gray 2005; Kooiman & Bavinck 2005). While the term is used widely in natural resource analyses, it has different meanings for different people (Kooiman and Bavinck 2005; Stoker 1998) and is applied in various ways (Stoker 1998). As stated above, governance can be understood as interactions between actors, structures, processes and traditions that determine how power is used to make decisions and how responsibilities are shared among actors (Kooiman & Bavinck 2005; Graham *et al.* 2003). The discourse on management of natural resources has historically been dominated by discussions on property rights regimes (as highlighted above) to explain challenges in managing natural resources. The application of property rights regimes has shown to be problematic especially where common pool resources have taken centre stage and where aspects of plurality have sharply come into focus in these governing systems. Identifying and analysing challenges in the governance of natural resources cannot be attributed to one or two causal factors and requires an understanding of the different actors, their institutions and the rules that govern these.

Figure 2 depicts the manner in which the researcher (SW) visualised how governance is understood, in the context of this study. Accordingly, governance involves various policy and legal frameworks (international and national), a range of actors with varying values and principles, as well as disciplinary orientations, or life experiences, institutions and management approaches that are interactive. These interactions amongst the various governance actors and institutions influence how local resource users engage in governance processes; however, local resource users infuse governance processes with their values, interests and goals. Consequently, governance within a fishery is dynamic and interactive, as various goals and objectives are pursued by those involved in these processes.

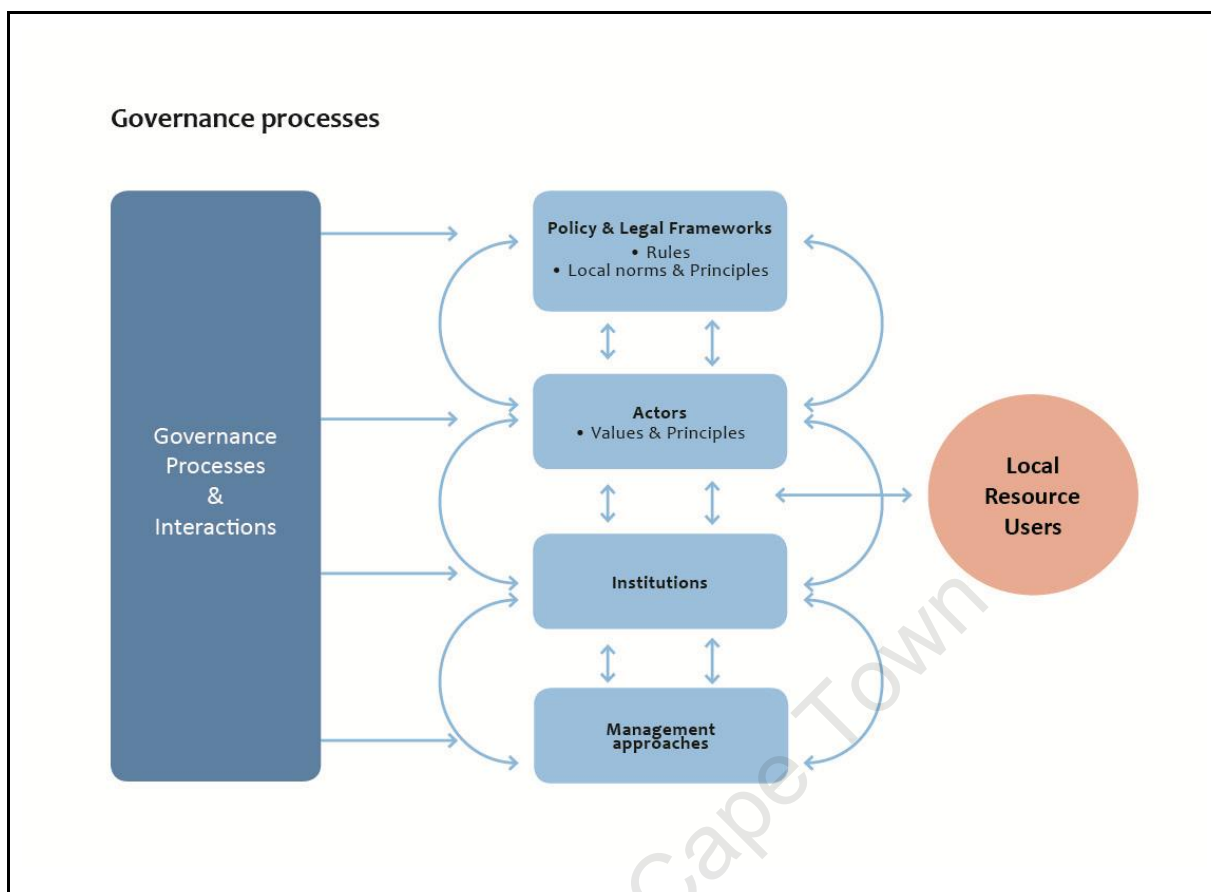


Figure 2. Interpretation of governance processes in the context of this study.

Jentoft (2008) notes that governance is concerned with pursuing certain goals, as well the management of how to go about achieving these goals (Jentoft 2008). Furthermore, “governance is a broader concept, which invites a more reflexive, deliberative and value-rational methodology, than the instrumental mean-end, orientated management concept” (Jentoft 2006:671). Therefore, governance is seen not only as an activity undertaken by policy-makers or managers, but rather a practised activity that also consists of involvement of and assumption of responsibilities by a range of actors. Within governance structures and processes, individuals or institutions exercise their powers in order to achieve desired outcomes (Graham *et al.* 2003; Pierre & Peters 2000). The process of exercising power is shaped by a combination of the roles, responsibilities, relationships and accountability of the actors involved (Borrini-Feyerabend 2004; Graham *et al.* 2003). In certain context, governance can be “undertaken in part by civil society or non-state actors through applying informal rules, such as customary regulations, taboos, and social norms or shared strategic behaviour” (Van Trung Ho *et al.* 2012:18). In other contexts, state actors and organisations involved in the political structure may employ formal rules – political laws, contracts and agreements, to achieve their governance objectives. In some cases the roles and responsibilities of actor groups can be interchanged. For example, where the concept of co-management is applied, the resource users may be involved and partake in decision-making processes (Pomeroy 1995; Berkes 2005). In many fishery systems and coastal regions of the world, governance is embedded in situations of legal pluralism (Von Benda-

Beckmann 2006; Bavinck 2005). In these situations, Jentoft *et al.* (2009) add, the bridging or connecting of legal systems and the understanding thereof is an important concern for governance.

Therefore, in a diverse, dynamic and complex world characterised by various influential factors, no single actor can legitimately and effectively govern or seek to address societal problems in isolation (Armitage 2008; Berkes 2006; Kooiman 2003). As different stakeholders possess diverse perspectives and abilities to view or address various aspects of a problem, they can help each other to explore and overcome their differences and seek more comprehensive solutions to collective problems (Imperial 2005; Gray 1989). With the proliferation and increasingly important role of non-governmental organisations (NGOs) and movements in natural resource management, visible changes can be observed in the political and governing landscape of most countries (Weiss 2000). Governance that comprises various actors and institutions across multiple levels and scales, aims to solve social problems which include uncertainties and change (Ostrom 2005; Hardy and Phillips 1998). Governance by its nature is therefore about complex situations and making hard choices. Kooiman (2005) further adds that while trying to work towards solving some of these challenges, stakeholders should aim to agree on basic principles to guide action and decision-making. By outlining principles, stakeholders are able to understand what is deemed important to the different governing actors. Therefore governors and stakeholders should identify fundamental principles guiding decision-making and from there outline the goals of governance and management and then determine the methods for reaching these goals (Kooiman 2005).

Kooiman & Bavinck (2005) highlight three orders of fisheries governance. The first they term 'first order governance' which consists of management and deals with the everyday activities and problems within the fish chain. Second order governance consists of the institutional arrangements in which management (first order) takes place and is viewed as the interface or area where those who govern and those being govern meet. The third order or meta-governance, comprises of the principles and values of governance which is guided by rationality, responsiveness and performance. The overarching aim of meta-governance is therefore to ensure that governing is based on "verifiable facts, a logical choice of instruments and a defensible strategy" (Kooiman & Bavinck 2005: 20). Achieving the overarching aim of meta-governance is however not that straightforward. As governance of natural resources, and in this case fisheries governance, comprises of various actors and their agendas, it can be viewed as a social process infused with different levels of interaction. If governance consists of different actors (governors and those being governed) different levels of power are inevitable and therefore will result in situations where some have access and others do not.

2.3 UNDERSTANDING ACCESS AS MORE THAN PROPERTY RIGHTS

2.3.1 The ‘entitlement’ approach

The aim of this section is to develop and present an expanded view of access (Ribot & Peluso 2003). In this respect, the study seeks to transcend the notional definitions and understandings of access, and document and explore those mechanisms that facilitate and play a role in access, as determined by case study research. However, as noted in the introduction, the preliminary conceptual framework presented in this chapter draws on the definition and view of access developed by Ribot and Peluso (2003), which is quite different from the classical notions of access. According to Ribot and Peluso (2003), access is defined in terms of ‘abilities to derive benefits’, as opposed to the property theory view of ‘rights to derive benefits’. While this alternative view is being popularised by Ribot and Peluso’s (2003) access framework, others like Sen (1976, 1981) and Berry (1989) have suggested a more extensive approach to understanding access in relation to natural resources. Thus, a brief review of earlier discussions on access and entitlements is necessary, as these earlier notions clearly influenced recent articulations of access.

Sen’s (1976; 1981) entitlement work attempts to theorise access and control over resources. In his entitlements approach, Sen’s theorisation begins by attempting to explain why famine occurs in places where sufficient food supplies are available. He draws attention to endowments (which may include land, labour etc.), how these are transformed into entitlements, and how this, in effect, improves capabilities and welfare (Sen 1981; 1976). Although Sen originally restricted the term ‘entitlement’ to rights (Dietz 1996), his approach concentrates on the ability of people to command food through the legal means available in society. These means may include production opportunities, trade opportunities, and entitlements in relation to the state, or other methods of acquiring food. It therefore focuses on abilities to command food that may be legitimised by the legal system operating in a particular society.

Statements about access immediately trigger questions of ‘who gains access?’, ‘how?’ and ‘through what means?’ As many natural resources are subjected to various demands from different individuals, decisions are made as to who may use these resources and in what ways. Accompanying these concessions are certain rules that determine the order for use and management. Claims to use can be based on a variety of legal systems and, in some societies, different entitlement rules can compete, which could become highly complex in local contexts (Dietz 1996). Furthermore, even where these claims of rights are not used for many years, ‘hereditary rights’ may still have to be acknowledged (Dietz 1996).

In Sen’s (1981) entitlement mapping, the connection of ownership can also be observed in private-ownership market economies. In practical terms, this could be seen as: ‘I own my pen. Why is this

ownership accepted? Because I got it exchanging money I earned for it. And why is this ownership of that money accepted? Because I received this money for selling fruit owned by me. And why is my ownership of these fruit accepted? Because I grew them on my land with my own labour. And why is my ownership of the land accepted? Because I inherited the land from my father. Why is your father's ownership of the land accepted? Because he inherited it from his father' (adapted from Sen 1981). This link may continue and, within this chain of entitlement relations, one relation will legitimise the other set of ownership. Therefore, entitlement relations accepted in a private-ownership market typically include the following (adapted from Sen 1981:2):

- *Trade-based entitlement:* An individual is entitled to own what he/she obtains by trading something that he/she owns with a consenting individual(s).
- *Production-based entitlement:* An individual is entitled to own what he/she gets by investing in production, using his/her own resources or resources hired from willing individuals, and is subjected to the terms of reference of trade.
- *Own-labour entitlement:* Individuals are entitled to their own labour power and therefore to the trade- and production-based entitlements related to their labour power.
- *Inheritance and transfer entitlement:* An individual is entitled to what is willingly given to him/her by another who legitimately owned it, possibly to take affect after the person's death (if this is specified).

These entitlement relations are seen more or less as the straightforward type; there are others that are more complex in nature. These may see individuals identified as entitled to enjoy some of the produce of some property without being in a position to trade it, or entitled to inherit the property of someone who did not specify it for anyone's inheritance.

As the entitlements approach concentrates on each person's entitlement to commodity bundles including food⁴, it views starvation as the failure to be entitled to a bundle with enough food (hence, the person has no ability to command food). A person's endowment is seen as their 'ownership bundle', and the function that specifies the set of alternative commodity bundles that the person can command for each endowment bundle is seen as 'exchange entitlement mapping' (Sen 1981). This relationship of 'ownership bundle' and 'exchange entitlement mapping' is demonstrated by Sen in his description of how a peasant has his land, labour power and some other resources, which together

⁴ Sen's concept of entitlement is based on his study of the Great Bengal famine. Here, Sen (1981) notes, that famine was not produced by climatologically-induced lower food production resulting in food shortages, but rather that social and political mechanisms resulted in the lack of exchange of entitlements. People did not have access to food as they lacked the appropriate entitlements (Dietz 1996).

comprise his endowment (pg. 46): With that endowment, the peasant can produce a bundle of food that he will own. Alternatively, he can sell his labour power and earn a wage and, with that, buy commodities, which include food. He could even grow some cash crops and sell them to buy food and other commodities. There may be many other possibilities, and the set of all such available commodity bundles in a given situation is the exchange entitlement of the peasant's endowment. Within this mapping process, specific relations for each endowment bundle would be highlighted. Here, exchange entitlement mapping would also depend on the legal, political, economic and social characteristics of the society in question and the individual's position therein. According to Berry (1989), access depends on participation in a variety of social institutions, as well as on material wealth and market transactions. As in Ribot and Peluso's framework, Berry (1989) draws attention to the manner in which access is dependent on other processes, including participation in institutions, and material and social relations. For Berry (1989), therefore, the emphasis is focussed on the processes of negotiation and how social actors position themselves in order to participate in access processes and derive benefits from resources.

Sen's notion of entitlement draws attention to other elements within the entitlement mapping process, just as Ribot and Peluso's (2003) access framework calls for analysing the various mechanisms at work in access relations. While Ribot and Peluso (2003) pay little attention to Sen's entitlement mapping in their *articulation* of access, it is evident that Sen has indeed influenced their *conceptualisation* of access. Of interest to this study from Sen's conceptualisation of entitlement, are the notions of how people's endowments are transformed into entitlements, and how these entitlements are used in order to access and make claims to resources. However, Koch (2008) points out weaknesses in both Sen (1981) and Ribot and Peluso's (2003) conceptualisation of and approach to access, in that neither discuss how endowments (Sen) or people's involvement in access mechanisms (Ribot and Peluso) come about. By focussing on access and livelihoods it becomes imperative that an understanding is based on how and through what measures access and livelihood opportunities are explored, but equally important to know is why other opportunities were not considered or possible (de Haan & Zoomers 2005). One of the aims of this study was therefore to address these shortcomings through empirical research that sought to identify the access mechanisms employed by fisher communities and the underpinnings thereof, and by gauging which factors and processes impact on their abilities to gain access. In this study, it is maintained that an understanding of access in small-scale fisheries requires attention to historical events and factors that continue to shape endowments or abilities in fisher livelihoods. The section that follows describes how Ribot and Peluso's (2003) access theory highlights that rights (whether formal or informal) to resources are key to accessing natural resources, but not the most prominent in access analysis.

2.3.2 The ‘theory’ of access

In Ribot and Peluso’s (2003) theory of access, the approach is largely based on the abilities that people utilise in order to benefit from access, including material objects, persons, institutions and symbols. Access therefore depends on ‘bundles of power’ which individuals hold; these are seen as the means whereby actors gain, control and maintain access to resources. In this access approach, these abilities, or ‘bundles of power’, can be equated to endowments (entitlements approach) that people would need to possess in order to benefit (from resources) and avoid starvation (by commanding food), respectively. Ribot and Peluso (2003) explain (pg. 154): “Different people and institutions hold and can draw on different ‘bundles of power’ located and constituted within ‘webs of power’ made up of these strands. People and institutions are positioned differently in relation to resources at various historical moments and geographical scales. The strands thus shift and change over time, changing the nature of power and forms of access to resources.”

The authors continue, adding that the study of access is concerned with the multiplicity of ways in which people derive benefits from resources, including property, but not limited to property relations alone (pg. 154). Their concept of access is aimed at facilitating a grounded analysis of who actually benefits and the processes used to derive benefits. What makes this view of access different from the way in which access has been understood in terms of property theory, is that the authors draw attention to the fact that while property assumes rights, access in their opinion does not hinge on rights, as many people enjoy benefits from resources without having rights to them. Therefore, a problem in using the term ‘property’ when discussing access to natural resources is that many people may be able to use and enjoy the benefits of these resources without having rights to them. Additionally, the authors point to the fact that having a right to access a resource does not necessarily mean the possibility of procuring benefits.

This study adopts the notion of access articulated by Ribot and Peluso (2003), which focuses on abilities to “benefit from things” and not just on the various rights that people have in relation to resources. Here, by focussing on abilities, this notion draws attention to a range of possibilities and activities, termed ‘mechanisms of access’, which are drawn on in order to benefit from certain natural resources. Moreover, as mentioned earlier, these abilities are influenced (whether enabled or hindered) by other processes, such as governance.

The following section describes what Ribot and Peluso (2003) term ‘mechanisms of access’. The authors make a distinction between the different types of mechanisms that influence access and how individuals draw on and engage with these mechanisms in order to benefit. To conclude, a preliminary conceptual framework of access that draws on Ribot and Peluso’s (2003) ideas, but also seeks to enhance weaknesses in their approach, is presented and briefly discussed.

2.3.3 Mechanisms of access

In Ribot and Peluso's (2003) access framework a distinction is made between two sets of mechanisms: The first concerns mechanisms based on 'rights-based access' (or direct elements of access), including 'illegal' access, which are sanctioned by law, custom and convention (pg. 156). The second relate to 'structural and relational mechanisms of access' (indirect elements of access), which include access to technology, capital, markets, labour, knowledge, authority, social identity and access through the negotiation of other social relations (pg. 161 - 162). The 'direct' and 'indirect' elements are seen as the first and second levels in the ability to benefit.

2.3.3.1 Direct mechanisms

The direct elements in the access framework represent physical access obtained through property rights or 'extra-legal' measures; this is seen to represent *access gain*. As access is usually understood in terms of rights, a discussion was provided in the introduction of this chapter on property and how rights are defined in property regimes. While this served to highlight that property does have a relevant role in access, it was also noted that benefits from resources may be derived, in some instances, even where no rights exist. These acts or enjoyment of benefits where no formal property rights exist, are referred to as extra-legal elements of access (Ribot & Peluso 2003). This encompasses access obtained through illegal mechanisms including intimidation and theft. However, as Ribot and Peluso (2003) explain, access gained 'illegally' is a form of direct access based on the sanctions of custom, convention and law. Illegal access can also occur through coercion (i.e. force or the threat thereof) and stealth, consequently shaping the relations among those attempting to gain, control, or maintain access. Thus, access can be controlled illegally through these means and people can illegally maintain access by establishing relations with or posing counter threats to those who control access.

In South Africa, this type of access is often ascribed to informal activities, which may see individuals and communities benefitting from resources via means deemed illegal in terms of management or state rules. According to Kepe (2008), these informal activities override formal forms of access (via property rights) and allow people to gain access to land and resources from which they would otherwise be excluded. These scenarios, he adds, "are common in areas where land might be designated as belonging to the state i.e. forests or nature reserves and people from the neighbouring areas often 'illegally' treat these as *de facto* common property".

However, criminality is a matter of perspective and is subject to different interpretations (Hauck 2008; Kepe 2008). In the fisheries sector of South Africa, this type of access can be observed in the 'illegal' exploitation of fisheries resources. In a case study of abalone 'poaching', Hauck & Sweijd (1999) found that people justified their activities by noting that they were excluded from becoming formally

recognised in the new dispensation. As traditional small-scale fishers were, historically, not recognised or regulated by law in South Africa, the subsistence harvesting of marine resources occurred either on an informal basis or occurred unmonitored (Isaacs *et al.* 2007; Witbooi 2006). People claimed that ‘poaching’ was the only way to provide for their families. Hauck’s (2009) study on small-scale fisheries compliance resulted in the development of a conceptual framework for understanding the factors that resulted in fishers’ complying, or not, to rules and laws. This framework emphasised the need to understand compliance within a fishery system as a whole, acknowledging that social, economic, institutional and biophysical factors all impact on whether or not fishers comply. Furthermore, the framework highlighted that an understanding of compliance behaviour first requires a critical analysis of the law, its history and the power dynamics that have shaped it. The political underpinnings and injustices of the past therefore raise serious concerns regarding issues of access rights, which continue to be contested in fisheries management in South Africa (Hauck 2009; Hauck & Sweijd 1999).

2.3.3.2 Indirect elements of access

As rights-based mechanisms of access are defined as direct elements of access, the indirect elements concern a range of strategies and processes that play a role in *acquiring* and *maintaining access* to resources. These, according to Ribot and Peluso (2003), include access to technology, labour, capital, markets, knowledge, authority, social identities and social relations. The authors argue that these mechanisms are not absolute and, in different contexts, are determined empirically. However, Ribot and Peluso (2003) present some of the most common mechanisms that typically appear where people make use of natural resources in order to benefit. These are briefly unpacked below.

Access to *technology* is seen as a key feature where technology is required to extract or convert natural resources. For example, in order for a farmer to till his land and benefit from the sale of his harvest, access to equipment is needed for extraction, conversion and transportation of the harvest to available markets. The use of technology, however, is not only for purposes of conversion or extraction, but also serves to facilitate access and benefits. Furthermore, access to technology and *capital* can be seen as interlinked: as capital makes technology more accessible to individuals, this inevitably makes a person’s ability to benefit more favourable. Access to capital also means that individuals have more bargaining power, i.e. they could even be in a position to benefit from resources where there may be no actual right, and could also be in a better position than those who do not have access to capital. In Ribot and Peluso’s access framework, it is noted that access to capital can even help to buy influence over people who control access, and be used to maintain access by paying access fees or rental.

Access to *markets* and market availability are important factors and markedly affect how individuals benefit from resources. With regard to commercial resources for instance, if the right or ability to benefit is present without a market, then simply possessing abilities or rights would be insufficient. The degree of benefit from a resource through a market could also depend on a person's ability to manoeuvre through market forces (Kepe 2008). Access to *knowledge* about market forces, and to those who possess this knowledge, is a key feature in shaping access processes; individuals holding knowledge of resources and markets are placed in a more favourable position than others. Furthermore, holding information and knowledge may have direct benefits. For example, those who hold knowledge about the market and market prices may be in a more favourable position to benefit from greater profits by possessing bargaining power. However, of the indirect mechanisms of access, the issue of *knowledge* may be one of the more contested. In decision processes relevant to the control and management of natural resources, various discourses are evident, including scientific, state, local community and individual knowledge bases. Within these 'knowledge' discourses, the roles of traditional ecological knowledge (TEK) and scientific knowledge have taken centre stage in issues of natural resource management.

TEK is defined as "a cumulative body of knowledge, practice and belief, evolving through adaptive processes and handed down through generations by cultural transmission" (Berkes 1993:3). It is viewed as highly adaptive and consists of an integration of intergenerational observations and experimentation into a cumulative and long-term body of knowledge (Menzies & Butler 2006; Antweiler 2004; Usher 2000). TEK's relevance in natural resource management is recognised under Article 31 of the United Nations Declaration on the rights of Indigenous Peoples (2007), which notes that traditional peoples have the right to "maintain, control, protect and develop traditional knowledge as well as the manifestations of their sciences" (United Nations General Assembly 2007). Furthermore, TEK is promoted in Article 8(j) of the CBD, which states that signatories "respect, reserve and maintain knowledge of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity"⁵. As TEK is viewed as highly adaptive and dynamic in nature, it is regarded as something that is continuously transforming (Menzies & Butler 2006; Berkes *et al.* 2000). Holders of TEK therefore recognise it as knowledge of the past and present. This combination of past and present accumulated into a single body of knowledge allows TEK to offer both historical and contemporary understandings of environmental conditions (Hushlak 2012). However, TEK still faces barriers to integration and acknowledgement in natural resource management, and in terms of compatibility with contemporary scientific knowledge. The major obstacles could be attributed to the characteristic differences between TEK and scientific knowledge, which include qualitative versus quantitative data, long-term versus short-term

⁵ Convention on Biological Diversity: Article 8(j) - Traditional Knowledge, Innovations and Practices. Available online: <http://www.cbd.int/traditional> (accessed: 24/06/2011).

observations, localised versus generalised knowledge, subjective versus objective perceptions, and informal versus linear understandings of relationships, respectively (Raymond *et al.* 2010; Berkes & Kislalioglu-Berkes 2008; Agrawal 1995). This may be where the contestation lies, with each group's knowledge vying for legitimacy in order to further their knowledge position. Ribot and Peluso (2003) add that scientific narratives linking human activities to ecological changes, for instance, often serve to justify state control over resources or its restriction of access to natural resources.

Access to *authority* is seen as an important juncture in the web of powers that enable people to benefit from things (Ribot & Peluso 2003). Those in positions to mediate others' access, and those responsible for making and implementing laws governing access, can strongly influence who has access and who does not. Legal, customary and conventional authorities could also compete or be in conflict and have overlapping jurisdictions of authority over resources or areas. In these scenarios, individuals may be able to draw on any legal jurisdiction to progress their position for access and benefits. This could be seen as similar to 'forum shopping' within legal pluralism, where individuals make use of the most favourable option in a given situation to ensure a positive outcome (Meinzen-Dick & Pradhan 2002).

Access through *social identity* is often mediated via membership of a community or group (Ribot & Peluso 2003). Other attributes that constitute social identity include ethnicity, religion, status, place of birth, and the histories related to all of these. These attributes could result in some individuals being subjected to formal law, while others may be exempt based on exhibited social attributes. This may be evident, for example, where community leaders and village chiefs who also control resources, allocate access along identity lines (Ribot & Peluso 2003). While identity may be used as motivation for claiming access in some instances claimants (who are not part of the community group) who are less able to harness this mechanism to claim or gain access could use other mechanisms e.g. access to capital or markets or authority to gain access. This could result in competition and conflict between claimants. Another example may be where rights and claims are either attached or explicitly detached from particular localities, which could see local users who want to access resources for extraction purposes, being totally excluded from resource areas (Neumann 1998; Ribot 1995). Furthermore, identity-based access could result in 'outsiders' such as scientists having access to controlled access areas including nature reserves. Membership of a scientific group or institution may entitle individuals to privileged or exclusive access for the purpose of carrying out research, derived from access to authority (government permission) and capital (e.g. donor funds) (Ribot & Peluso 2003). In such scenarios, science-based forms of knowledge and research results have been known to have a greater influence in decisions and policy-making, and are deemed more legitimate than those knowledge forms from local resource users. This, according to Ribot and Peluso (2003), influences local users' relative abilities to maintain access and control over resources.

Access via the negotiation of *social relations* is seen as akin to identity and is central to virtually all other elements of access. The work of Berry (1989), cited earlier in this chapter, proposes that access also hinges on individuals' abilities to participate in various social relations. She adds that "since access to resources depends, in part, on the ability to negotiate successfully, people tend to invest in the means of negotiation which in other words could imply that people would find ways to actively participate within social relations in order to benefit from resources" (Berry 1993:15). Berry's (1993) analysis stresses the importance of the development of economically based ties, in addition to other identity-based relationships, as a means of being included or excluded from certain kinds of resources and associated benefits (Berry, in Ribot & Peluso 2003). Additionally, mechanisms labelled as indirect mechanisms of access can be viewed as forms of social relations. Ribot and Peluso (2003) note that understanding the multiplicity of ways that people are able to benefit is key to understanding the complexities of resource access.

2.4 PRELIMINARY CONCEPTUAL FRAMEWORK

Having explored some of the conceptual and theoretical underpinnings of access, this study now turns to presenting a preliminary conceptual framework (Figure 3, overleaf) for understanding access, for the purposes of applying the framework to the context of small-scale traditional fisheries in South Africa. This preliminary framework draws on the ideas presented by Ribot and Peluso (2003) in their theorisation of access, as well as concepts explored in Sen's (1981) work on entitlements. However, in the framework it is also recognised that access is mediated by the governance system; accordingly, governance should be included in an analysis of access.

What follows is the need to undertake empirical research in order to assess the utility of the framework in different natural resource contexts. Consequently, the intention of this study was to apply the preliminary conceptual framework to two case studies in small-scale fishing communities in South Africa, to assess the appropriateness and utility thereof in a particular natural resource context, and ascertain what mechanisms and processes are key to gaining and maintaining access in these contexts. The findings of this research are presented in *Chapters Six and Seven*, and are discussed in *Chapter Eight*.

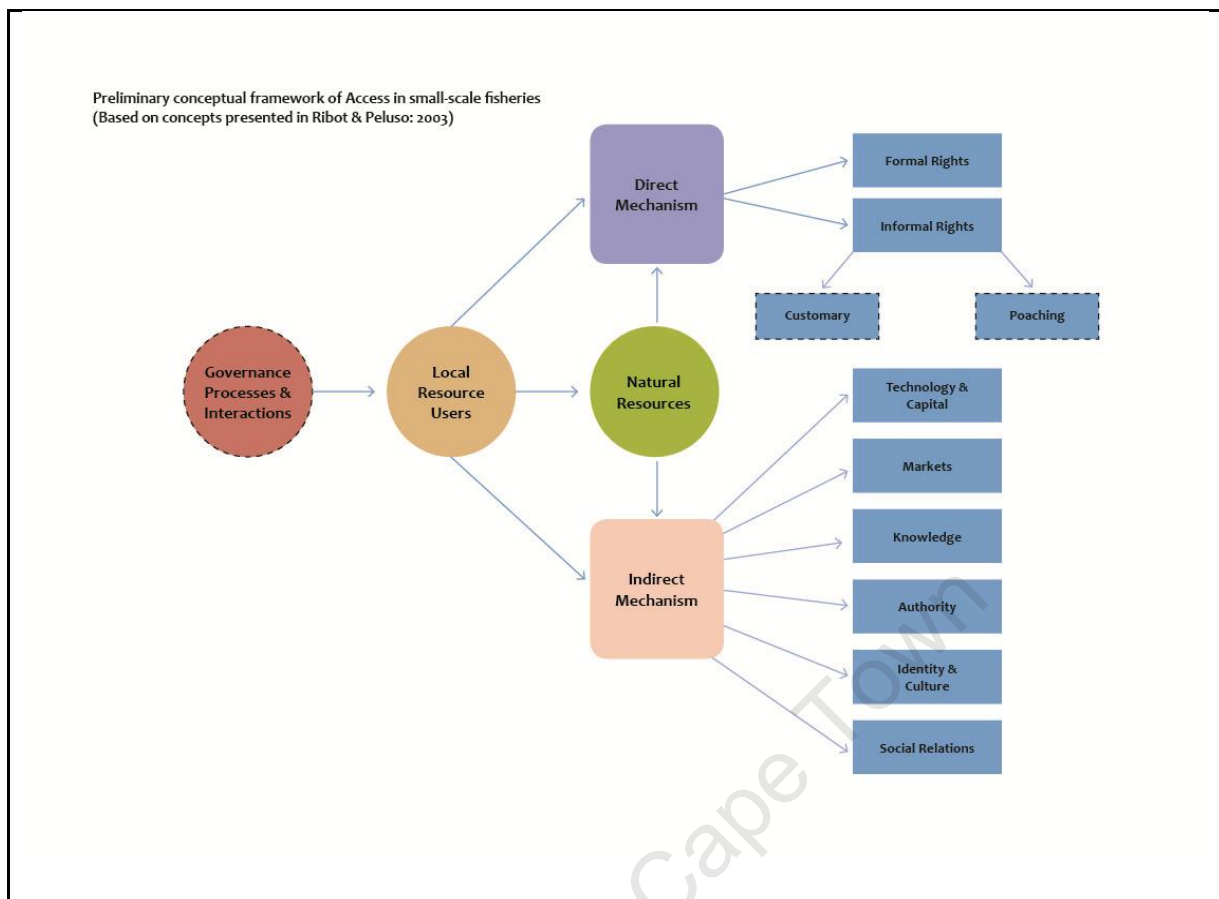


Figure 3. Preliminary conceptual framework for understanding access in small-scale fisheries.

While the preliminary conceptual framework may appear as rather one-dimensional at this stage, it provides a starting point for exploring issues of access and the mechanisms that enable or constrain access in small-scale fisheries systems in South Africa. Through investigation and application of this preliminary conceptual framework to the case studies that follow, it is subsequently adapted and the elements highlighted above see further development through discussion and presentation of empirical results. Accordingly, a revised and updated conceptual framework for understanding access in small-scale fisheries is provided in *Chapter Eight*.

2.5 SUMMARY

The aim of this chapter was to critically examine the concept of access in the context of natural resources and to provide the theoretical underpinnings to the notion of access guiding this study. The role of property in the access discourse was explored, in view of the dominance of property rights in the access literature. The review explored critiques of the role of property in the access discourse and emphasised that access is influenced by property rights as well as a range of other mechanisms and processes; therefore, property is not the sole determinant that facilitates access. The review of the

property rights discourse and the role that different legal systems play in mediating access, especially among resource-dependent communities, required a review of the legal pluralism literature to better understand the processes involved when two legal systems are relevant to an identical situation. These legal systems fall within the realm of governance; thus, it was also necessary to engage with the governance literature, as such systems and processes have bearing on the mechanisms that resource users harness to gain and maintain access to resources and areas. The concept and role of governance, which is increasingly being viewed as a crucial process that determines resource access and outcomes, was defined and identified as key. This was followed by unpacking the notions of access articulated by Berry (1989) and Sen's (1981) entitlement approach, which could be viewed as having laid the groundwork for conceptualising the alternative view of access articulated by Ribot and Peluso (2003).

The ideas underlying the access framework developed by Ribot and Peluso (2003) were presented and a detailed discussion followed of the 'mechanisms' that allow conditions for access. Some of the criticisms levelled against this alternative approach were briefly highlighted. Gaps were identified in the access framework, as well as the manner in which this study will address these. In conclusion, a preliminary conceptual framework for understanding access in small-scale fisheries in South Africa was provided. In the chapters that follow, this preliminary framework is applied to two small-scale fisheries in South Africa and empirical research is further developed.

CHAPTER THREE

METHODS

3.1 INTRODUCTION

The main methodological approaches used in this study are described in this chapter. The role of the researcher (SW) and the research approach are detailed here and ethical considerations relevant to the study are raised. The main methodological approach used included two case studies and qualitative data collection and analysis methods. As this study was concerned with access to fisheries resources and included aspects of governance, livelihoods, social and cultural attributes, among others, it was impossible to ‘box’ these issues into one discipline. Therefore, this research drew on theories and concepts from different theoretical approaches and discourses, as highlighted in *Chapter Two*. The data for this study were collected using interviews, focus group sessions, oral histories, a survey, literature reviews and archival information.

The fieldwork phase for this study stretched over two years (2009 and 2010). However, during September and October 2008, informal visits were made to the case study sites, the research questions and methods were piloted, a plan of action was drafted, and objectives for future fieldtrips were established. After the initial visits, the researcher embarked on a process of collecting oral histories in the case study sites. Prior to this, the researcher participated in two workshops on how to conduct oral histories and analyse the collected data accordingly.

During the two-year fieldwork phase, 72 official days of fieldwork were undertaken at the study sites. The duration of fieldtrips ranged from a minimum of three days to a maximum of two weeks. As the research sites were within reasonable driving proximity to the researcher’s location, fieldtrips could be undertaken frequently, with the possibility of spending a few days to a week at a site and then returning a week or two later. Fieldtrips were also influenced by particular activities occurring at the study sites, including policy-related activities and management meetings, and were primarily undertaken during the winter months when most people at the study sites were home and not engaged in fishing or seasonal work.

In the Ebenheaser case study area, the researcher was familiar with the community, committee leaders and many of the community dynamics. Access to the area and participants was therefore achieved with relative ease and the researcher had the opportunity to inform many of the community members at community meetings about her research plans and future activities. Familiarity with the community and context saved the researcher time during the fieldwork phase which officially included 34 days, as community members were aware of the researcher’s presence. Furthermore, not one participant declined a request to be interviewed or participate in the research. During times of absence from the

field, some community members kept regular telephonic contact with the researcher and *vice versa*. Community members would make contact and inform the researcher in the event of any new developments in the community or any aspect thought to be important and that the researcher should be made aware of by these individuals.

At the second case study site, Covie, the researcher made contact and visited the area twice in 2008 (two and four days, respectively) before commencing official fieldwork and data collection. The researcher made contact with a community member who was well known and respected by many people residing in the area, but also in adjacent communities. The initial contact was informal as the researcher wanted to get a sense of the context of the area, as prior reading was done on the community and the history thereof. After establishing contact with the community leader, the researcher was introduced to many other community members. The researcher therefore spent the first six introductory days at Covie establishing contacts, informing people about her research, and going for walks with fishers who pointed out historical fishing sites. These informal talks and walks provided useful information and also prompted the researcher to think about questions for the future data-collection stages.

Data collection at the Covie case study spanned four fieldtrips and 34 days of official fieldwork undertaken. Interviews were conducted with 48 community members, including 14 fishers. The researcher also conducted two focus group sessions and while the identified respondents were 6 in total this number would increase to well over ten people as many people would simply join in or listen and some participating. At times it was difficult to control who would be attending, but this did not compromise the objectives of the focus group sessions. This method was chosen as it could accommodate several people simultaneously and information could be discussed, debated and statements confirmed by community members and then communicated to the researcher. Having four to six people discussing research questions and having participation and inputs provided interesting discussions and useful data, with much less time spent performing individual interviews. Research trips were also extended well over a week at Covie when the researcher needed more time to establish contacts (especially during the initial visits), but this was usually overcome during first meetings as people were open and always willing to assist.

Further discussion on the aspects highlighted above, as well as the overall study approach and methods are presented in forthcoming sections.

3.2 THE RESEARCHER

The researcher undertook this study as part of a larger research project entitled 'Access to the South African Coast: Examining the Attainment of Policy Goals Post-Apartheid'. This project comprised

one doctoral study (present study), two master's projects and an overarching component which was aimed at examining broad trends in coastal access, with lessons drawn from the Western Cape, Eastern Cape and KwaZulu-Natal provinces of South Africa. The main focus of all subcomponent research projects was to investigate access patterns in the context of coastal and marine resources, with emphasis on understanding the socio-economic, cultural, livelihoods and governance dimensions that affect access. Prior to commencing with this doctoral study, the researcher was involved in various fisheries-related projects, which were aimed at: establishing co-management arrangements between government and fisher communities; investigating compliance in small-scale fisheries; exploring alternative livelihoods strategies for fishers; and assessing the role that local monitoring systems play in producing valuable information for scientific fisheries monitoring. The researcher therefore had a strong interest in conducting socially relevant research, i.e. producing systematic empirical evidence for understanding access from a multidimensional position including the experience of access to resources in small-scale fisher communities.

The case study sites were both rural and located in the Western Cape of South Africa. Entry and introduction to the communities was done with relative ease, as there was a prior research relationship (in the Ebenhaeser case study). Furthermore, there was identification with community members in terms of sharing the same language (Afrikaans). While it is conceivable that researchers from any cultural background could conduct the same research, the sharing of language, for instance, made communication during the data collection stages less problematic (i.e. community members could express themselves with ease in their own language and the researcher was able to follow). However, familiarity with the context also provided challenges and the researcher experienced this in terms of expectations that were created (e.g. being requested to act as a facilitator or intervene in community matters that were not related to the research activities). Therefore, at community meetings and through informal conversations with community members, the researcher had to reiterate the objectives of her doctoral research, emphasise her position and limitations as a student researcher, and clarify any issues of confusion or expectations. The researcher tried to assist whenever requests were made by the community for information about management- or policy-related issues.

3.3 RESEARCH DESIGN

A research design is seen as a plan, proposal or systematic outline of the way to conduct research, and it involves the intersection of philosophy, strategies of enquiry and specific methods (Creswell 2009; Srivastava 2004). Researchers are prompted to think through the philosophical paradigms that they align their study with, the strategies of enquiry related to these paradigms, and the methods or procedures of the research that translate their approaches into practice (Creswell 2009). While philosophical paradigms or ideas remain largely hidden in research, Slife & Williams (1995) argue

that these still influence the practice of research and that researchers should make their positions explicit at the outset, as this information will help to explain why they chose a qualitative, quantitative or mixed-method approach.

3.3.1 Social constructivist paradigm

This research study is aligned with the social constructivist paradigm. Within this paradigm, individuals are seen to look for an understanding of the world in which they live and work, and develop subjective meanings of their experiences (Creswell 2009; Crotty 1998). Here, the goal of the researcher is to rely as much as possible on the participants' views of the situation being studied. During data collection, questions are broad and open-ended, giving the participant the opportunity to construct the meaning of the situation, typically forged in discussions or interactions with other people (Creswell 2009). In social constructivism there is focus on the participants' specific contexts, especially people's everyday life settings. This is also done in order to understand the historical and cultural background of the participants. Creswell (2009) adds that the researcher's intent is to interpret the meanings that people have of their world and, instead of starting with a theory, social constructivists generate or inductively develop a theory or pattern of meaning strongly rooted in participants' ideas about their situation and experiences. Therefore, in this study, a preliminary conceptual framework based on the notion of access articulated by Ribot and Peluso's (2003) was developed and applied to the case study sites. This study does not start off with a grand theory, but rather applies the ideas proposed in Ribot and Peluso's access framework to assess its applicability in different resource contexts.

3.3.2 Qualitative research approach

A qualitative research approach was used in this study. Qualitative research is described as a means for exploring and understanding the meaning that individuals or groups ascribe to a social or human problem. This type of research typically involves data collection in the participant setting; data analysis inductively builds from particulars to general themes and the researcher develops interpretations of the meaning of the data (Creswell 2009). Maxwell (1996) further notes that to formulate any qualitative research design, there are some general questions to consider when deciding on the approach and structure of the research. The first aspect to consider in any research study is to ask the question of 'why' the study is conducted or needed. The answer may be contained within personal, practical or intellectual goals. The second question the researcher should ask is 'What is going on?' By doing this the researcher will be able to connect to some research paradigm and use existing theory to help design and situate the study. The third question would ask 'What is it that needs to be understood?', or 'What is it that the researcher wants to understand?' During this phase,

the researcher is able to develop questions and formulate a research hypothesis. Fourthly, the question ‘How will the researcher do this?’ allows the researcher to select the appropriate research tools for gathering and analysing the phenomena he/she is studying. Lastly, when designing a study the researcher should ask ‘How might I be wrong?’ This is where the concept of validity is considered and whether or not the hypothesis has been proved or disproved, or how the findings have contributed to knowledge. Figure 4 illustrates the outline and basic processes of a qualitative research design.

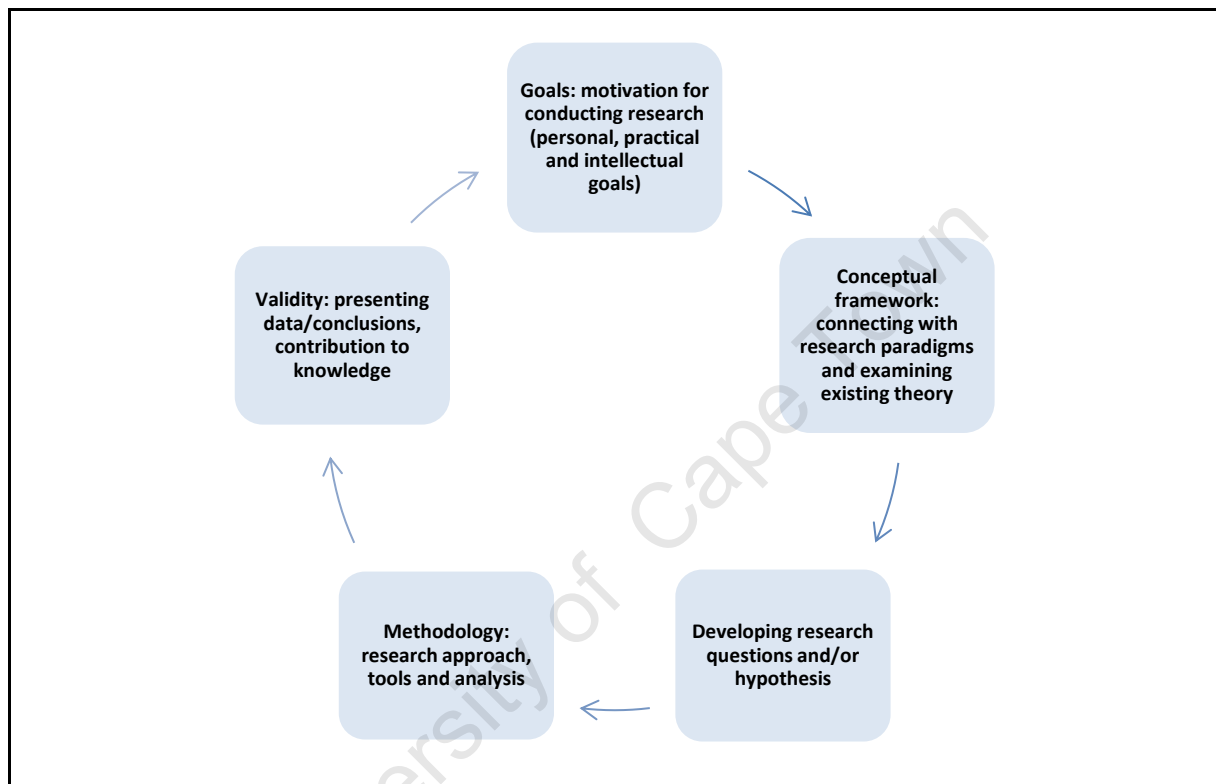


Figure 4. Qualitative research design (adapted from Maxwell 1996).

While it is not required for any research design to apply a rigid model or conduct a study in any order as highlighted above, many qualitative studies will employ some aspect of the design outlined. Della Porta and Keating (2008) note that the choice of approach in a research design is also linked closely to another choice which includes whether to start with a theory, a method or a problem. They add: “Those aiming at a paradigmatic social science will often start with a theory, seeking to test it with a view to proving, disproving or modifying it and so contributing to universal knowledge ... Those interested in a specific problem on the other hand will tend to look for the method and approach that seems to offer more by way of understanding of the case ... Lastly, ways of combining knowledge can be characterised and may include synthesis, triangulation and multiple perspectives”. Triangulation is therefore about using different research methods to complement each other; multiple perspectives implies that a situation may have more than one interpretation according to how it is viewed; and synthesis involves merging elements of different approaches into a single whole, and this can be done

at various levels. While in some qualitative research designs there has clearly been a move in favour of the combination of methodological approaches, this is accompanied by cautioning as it could undermine the soundness of empirical results (Della Porta & Keating 2008). However, Newman and Benz (1998) note that qualitative and other approaches (e.g. quantitative and mixed-method) should not be viewed as polar opposites or dichotomies, as they represent different ends in a continuum. In this research study, different approaches and methods were applied to gather and assess information. The study makes use of an interpretivist approach, grounded theory, action research and qualitative methods to gather and analyse data. These approaches and methods as well as their applicability to the study are described below.

3.3.3 An interpretivist approach

For millennia people have had relationships with the environment and have utilised resources within the environment. In the contemporary context, people still depend heavily on natural resources to contribute to their livelihoods, and this dependence has resulted in various approaches and positions being taken for observing people-environment relationships. These approaches vary and many explanations have been provided for problems affecting natural resources; in particular, the degradation of resources. While many explanations have been ascribed to environmental concerns and problems the most well cited is probably that of Hardin (1968), which in some way or the other still influences many of the debates on people-environment relationships. Hardin coined the notion of the 'tragedy of the commons' (TOC): "The commons is a pasture open to all herdsmen of a village. Each herdsman can keep some of his cattle on the commons, the rest his own land, and each herdsman can increase his herd by increasing the number of cattle sent to the commons. If each herdsman does so, the commons will be overgrazed" (Chwaszcza 2008: 147, quoting Hardin 1968). This concludes that each herdsman will maximise his own benefits and only act in self-interest, and in that lies the TOC. People are therefore simply seen as agents who will maximise their own gains without any consideration for other users or the environment that produces these benefits. This argument has been applied to many real-life situations that require collective action or protection of common or public goods (Ostrom 1990); however, this represents a rather structural interpretation of social life (Chwaszcza 2008).

Hardin's TOC scenario can be seen as being mirrored in the positivist paradigm which aims to single out causal explanations on the assumption of a cause-and-effect relationship between variables (Héritier 2008). Goulding (2002) notes that this paradigm remains saturated with the language and logic of the physical sciences, almost as if the physical sciences have the exclusive premium on credibility. Furthermore, priority is attributed to directly observable phenomena and the intangible and metaphysical are treated as speculation and, as such, considered to be 'unscientific'. However debated and challenged, the TOC scenario has provided various alternative models and insights for

interpreting social phenomena in natural resource management research. People and their interactions with the natural as well as social environment are no longer simply reduced to such cause-and-effect scenarios; rather these relationships are seen as complex systems that cannot be reduced to mathematical analysis.

The most contrasted paradigm to positivism is interpretivism. As new forms of enquiry became established in the twentieth century, a shift took place away from a positivist view towards an interpretive view. As the emergent interpretive tradition held that people were part of and created their own reality, it did not make sense to see the world as separate from people who inhabited it or used it (McNiff & Whitehead 2006). Within this approach, therefore, objective and subjective meanings are deeply intertwined. Della Porta and Keating (2008) note that the interpretivist approach stresses the limits of mechanical laws and emphasises human volition, as human beings are ‘meaningful’ actors, therefore researchers should aim at discovering the meanings that motivate their actions rather than relying on universal laws external to the actors. Earlier social theorists such as Weber called for a type of social science that aims to understand the motivations that lie behind human behaviour; a matter that cannot be reduced to any predefined element, but should be placed within a cultural perspective where culture denotes a web of shared meanings and values (Della Porta & Keating 2008). Interpretivism therefore emphasises that it is impossible to understand historical events or social phenomena without looking at the perceptions that individuals hold of the world or processes that affect their well-being (Lin 1998). Furthermore, it proposes that there are multiple realities, not single realities of phenomena, and that these realities can differ across time and place.

Interpretivist researchers are therefore seen to select cases or phenomena to study based on their inherent interest, and not because they are typical of a category, but for what they reveal about complex social processes (Della Porta & Keating 2008). In that sense, an investigation into access would document and describe access, but would also focus on underlying factors and processes (e.g. historical, cultural, political and ecological factors) and how these contribute to current practices and notions of access. In interpretivist analysis, there is an ‘holistic’ focus, emphasising cases – which could be the individual, a community or a social collective – as complex entities, stressing the importance of context (Della Porta & Keating 2008). Concepts are also seen as orientive and can be improved during the research and outputs; here, presentation of the data is usually in the form of narratives or excerpts from the text, such as interviews and notes.

The interpretivist paradigm has contributed to shaping the conceptualisation of this study and emphasises that access can not only focus on rights as Ribot and Peluso (2003) acknowledge. Furthermore, social dimensions play an important role in understanding access to fisheries resources in the small-scale fisher communities. The major task in this study was to explain these social aspects

and highlight how they came to be. This was done to give voice to these ‘uninterpreted’ experiences of access which need to be considered in current management, policy and decision-making processes.

3.3.4 Grounded theory

This study adopts some of the principles of grounded theory. It does not commence with an hypothesis, but rather with experience as it seeks explanations for social outcomes and does not expect to derive these from universal rules or norms. Explanation comes from the interpretation of people’s motives for their actions and beliefs. Ferejohn (2004) clarifies this distinction by contrasting ‘externalist’ and ‘internalist’ explanations. He adds that externalists explain action by pointing to its causes, while internalists explain action by showing it as justified from an agent’s perspective. Externalist explanations are positivist and predictive, while internalist explanations are normative and hermeneutic. This difference is also applied as a contrast between positivist (quantitative) and interpretive (qualitative) methods.

Grounded theory is therefore a strategy of enquiry in which the researcher derives a general, abstract theory of a process, action or interaction grounded in the views of the participant (Creswell 2009). The process involves using multiple stages of data collection and the refinement and inter-relationship of categories of information (Charmaz 2006; Strauss & Corbin 1998, 1990). In this research, data collection consisted of various stages including frequent field visits, developing research questions and analysing data gathered, while a process of redefining research questions occurred simultaneously. The researcher also adopted an inductive attitude towards the study in that research questions were also developed during the course of the research, and the design and questions were modified while the research was in progress. Another important aspect was that the theoretical development of the study was shaped by the strategies of enquiry which included oral histories and interviews (discussed later in this chapter); therefore, understanding and interpreting access from the perspective of participant perception and experience was key.

A key criticism levelled against grounded theory has been that it accepts the researcher’s ‘reading’ of the data, subject to carrying out the necessary research protocols (Phillips & Hardy 2002). Furthermore, Goldthorpe (2000) highlights two further criticisms of grounded theory. The first, he notes, is related to the extreme inductivism and ‘ad hocery’ of grounded theory. Second, as grounded theory does not rely on indicators, researchers engage in conceptualisation which is disguised as “sensitivity to the context” (pg. 390). As a result grounded theory is seen by its critics as escaping the testing of theory (Mjøset 2005). This research took heed of these criticisms. Notably, the current study emanated from observing access in the dominant property theory debates, but does not adopt its definitions and understanding of access, but rather the emerging articulation of access put forward by

Ribot and Peluso (2003). While the study does not test their theory, it acknowledges and engages with their formulation and definition of access in the context of fisheries resources.

3.3.5 Action-orientated research

With regard to one of the case study areas and certain policy directives and management processes initiated here, the research also took on an action-research-oriented approach. Those conducting action research are characterised as being ‘insider’ researchers who see themselves as part of the situation that they are investigating, with a clear aim of bringing about direct change (McNiff & Whitehead 2006). Action research has therefore always been understood as people taking action to improve their personal and social situations, with some seeing it as potentially promoting a more productive and peaceful world order (Heron & Reason 2001). While the researcher acknowledges that she was part of the research process (being the principle investigator), caution was taken to remain objective. The management processes that occurred in the case study site were therefore not initiated by the researcher, but as it had direct bearing on the research as well as community members’ access to marine resources, it was important to document these processes. In terms of participation, the researcher’s activities were limited to: commenting on management documents; assisting the community in articulating their position on management decisions; providing information; and being present at meetings where the management plans for the case study site were discussed. The researcher therefore notes that she does not consider herself to be an ‘insider’ researcher as the definitions of action research delineate. Rather, when opportunities arose where it seemed appropriate to participate or comment, this was done in order to stay abreast of any new developments that could contribute to or affect the study. A criticism levelled against action research is that it may become hard to define boundaries or to distinguish who is telling the research story from whose voice is being heard when the researcher becomes immersed in the research (McNiff & Whitehead 2006). The researcher therefore remained mindful of the fact that during the data collection stages to document these as it emerged from the interviewees experiences and perspectives.

3.4 METHODS

A qualitative approach was adopted in this study and methods that are considered to be standard of qualitative research studies were employed. In order to address the study’s objectives, various methods were employed including: (i) the selection of a case study method, (ii) a literature review and archival research, (iii) interviews (semi-structured interviews and oral histories), (iv) focus group meetings. These techniques were used to collect and analyse data for the study.

While this study has employed a qualitative approach, it concurs with Newman and Benz (1998) that qualitative, quantitative and mixed-method approaches should not be viewed as polar opposites or as rigid and inflexible. The researcher made use of an interview schedule (for community interviews) which had qualitative components as well as open-ended questions which allowed participants to construct and elaborate on their responses. The researcher also referred to other survey information to gather socio-economic information or perceptions on key issues investigated in the study. The methods and rationale behind selecting these follows.

3.4.1 Case study method

A case study is a research strategy based on in-depth empirical investigation of one or a few phenomena to explore the configuration of each case and elucidate features of a larger class of (similar) phenomena (Ragin 2000). Other definitions see case studies as empirical enquiries that investigate contemporary phenomena within real-life contexts, especially when the boundaries between a phenomenon and its context are not clearly evident (Yin 1994). Bennett (2004) explains that researchers use case studies to develop and evaluate theories, as well as to formulate hypotheses or explain particular phenomena. Case studies are therefore used deliberately to cover contextual conditions, in the belief that they might be highly pertinent to the phenomenon of study (Yin 1994). As this study wanted to provide an enhanced understanding of access beyond rights, two case study sites were selected that displayed informative histories, dynamic fisher livelihoods, access challenges and accompanying processes which the researcher believed could contribute to this understanding. Venneson (2008) adds that, in any case study, there is an unavoidable descriptive dimension, and case studies sometimes explore subjects about whom little is previously known, or phenomena in need of interpretation.

The selection of the two case study sites was primarily based on three pre-determined factors: the 'richness' of the data, the familiarity of the case studies, and personal motivation. By 'rich data' it is meant that the data collected would be detailed and complete enough to provide a full and revealing picture of what is going on (Maxwell 1996). At both case study sites, issues of access to fisheries resources are highly contested and embedded in political, historical and cultural processes. Another important aspect at both sites was that both communities were involved in a land claim. Even though the scope of the current study has its focus on access in relation to fisheries resources, the land claim at both sites has implications for access to fisheries resources, as these issues are not clarified in current land claims processes. (A detailed introduction to the case study areas and land claims is provided in *Chapter Five*.)

As highlighted earlier, before commencing with this doctoral study, the researcher was involved in fisheries-related research; therefore, the study sites were not completely new areas to the researcher

and contact was established prior to the current investigation. The researcher was familiar, to some extent, with the areas and their context and believed that these two cases were well suited for the study's objectives in that they could provide good examples of fisheries access and livelihoods. This will be highlighted in Chapter Five where the case study sites are introduced in detail as well as the empirical chapters where information is provided on these coastal communities who lost access (Covie) and faced threats (Ebenhaeser) to access fisheries resources due to land dispossession and conservation objectives, pre and post-apartheid.

3.4.2 Literature review and archival information

Prior to commencement of the fieldwork and throughout the study period, the researcher reviewed relevant literature that could inform the study. Before writing the initial proposal, various bodies of literature were reviewed, including access theory, contemporary social theories, literature on property rights in the context of natural resources, coastal and fisheries governance literature, existing literature on the case study sites, as well as various literature on research and methodological approaches in qualitative research studies. By engaging with the literature, there was a need for the researcher to establish insights into ways in which the research scope could be limited and where the need of enquiry should be emphasised. Furthermore, there was a need to establish the theoretical underpinnings which informed the research.

Cresswell (2009) adds that the literature review has several purposes, as it shares with the reader the results of other studies that are closely related to the one being undertaken. In addition, it relates a study to the larger ongoing debates and dialogues in the literature, filling in gaps and extending to prior studies (Marshall & Rossman 2006; Cooper 1984). The literature review therefore provides a framework for establishing the importance of the study, as well as a benchmark for comparing the results with other findings.

The inclusion of archival information was for the purpose of documenting historical information relevant to the case study sites and providing clarity on information obtained during the data-collection stages. As the participants shared stories and historical information, it was important to verify some of the information as well as provide documented evidence of these events where available. The researcher spent time in the Western Cape Archives and Record services in Cape Town in order to gather this information. The referral to other literature and information sources includes theses, government documents, policy papers and electronic internet searches, where applicable. The use of all sources of information was valuable for the introductory stages of the research as well as the data collection and analysis phases of the research.

3.4.3 Interviews

The researcher's method of sampling can be characterised as a 'snowball' effect, where participants were not selected by pre-determined criteria; rather, those who the researcher randomly approached and requested to participate urged others to participate. In some cases interviewees informed people about the researcher's presence and community members even enquired as to when the researcher may interview or visit them. The researcher also made use of purposeful sampling – a strategy in which particular settings, persons or events are selected deliberately in order to provide important information (Maxwell 1996). In order to acquire an understanding of historical fishing and livelihood practices in the communities, for example, the researcher selected older individuals as well as former and current fishers to provide this information. Weiss (1994) further notes that this type of sampling presents the researcher with people who are uniquely able to be informative because they are experts in an area or were privileged witnesses to an event.

The interviewing process utilised four information-generating methods, including oral histories, semi-structured interviews, focus group meetings and participant observation. At both case study sites the participants who engaged in the oral history interviews were predominantly older community members (above the age of 55 years, with the oldest being 92 years of age). The semi-structured interviews included fishers and key community members and other interviewees who were well informed about issues and processes affecting the community. The following sections elaborate on the interviews in the case study sites and highlight their applicability as data-collection methods.

3.4.3.1 Oral histories

As this study's focus lies in fisher communities, a key data collection tool included the use of oral histories which the researcher believed would produce a better understanding of the historical context of the community, community life and fishery-related activities, and the histories of all of these. While the researcher interviewed participants individually (with the exception of one interview where a brother and sister were interviewed together), these interviews can be categorised as oral history interviews and not life-story interviews. The difference between a life story and oral history is usually in terms of emphasis and scope. An oral history most often focuses on a specific aspect of a person's life, such as work life or a special role that the person played in some part of the life of the community (Atkinson 1998). Additionally, an oral history most often focuses on the community or what someone remembers about a specific event, issue, time or place. Therefore, when an oral interview focuses on a person's entire life, it is usually referred to as a 'life story' or 'life history', and not an 'oral history' (Atkinson 1998).

The emphasis during the oral history interviews was therefore not only focussed on the interviewee's life, but discussions ranged from specific information about the participant, their upbringing, community life, historical events related to access and fishing activities and, in some interviews, perceptions about current processes, access, management decisions and broader activities within the community. During these sessions, the researcher made use of a tape recorder while listening intently to the interviewee. Yin (1994) adds that a good listener hears the exact words used by the interviewee (sometimes the terminology reflects an important orientation), captures the mood and affective components, and understands the context from which the interviewee perceives the world. As the participants spoke about historical events, there were times when terms or names were used for events that the participants may have assumed the researcher was familiar with. As soon as this happened the researcher had to intervene and asked the participant what they meant, and an explanation was provided. This exercise in listening also prompted the researcher to be more alert during all interviews as information and meanings could be overlooked, misinterpreted later (during analysis) or not captured at all. A total of 14 oral histories were conducted at both case study sites, with interviews ranging from forty minutes to two hours.

In addition to capturing these oral histories, the researcher collaborated with the Legal Resources Centre (LRC) and an NGO, Masifundise Development Trust (MDT), to document oral histories at the Ebenhaeser case study site. In the Ebenhaeser results chapter (*Chapter Six*), the researcher draws on the outcomes of two of these oral history interviews. Consent to include these interviews in this study was obtained from the collaborating research partners, as well as from the interviewees.

3.4.3.2 Semi-structured interviews (interview schedule)

At both case study sites the researcher conducted 90 interviews collectively using a semi-structured interview schedule. The participants included fishers, crew and community members and those considered 'illegal' fishers. The interview schedule used for the community survey consisted of basic socio-economic questions, including questions on household incomes and the importance of these, fishing activities, involvement in fishery-related activities, perceptions of access and resource sustainability, current management activities, and livelihood opportunities, among others. The interview time ranged from one to one-and-a-half hours. Consent to use full names and ages were obtained from all respondents.

The interviews and communication with the compliance officials were dominated by discussions on resource management and sustainability. In the Covie case study site, community members who work as compliance officials spoke about difficulties in terms of performing their mandate as both officials and community members. Further communication with management officials at both case study sites

frequently occurred at community meetings or when specific management meetings in relation to the case study sites were arranged at their official premises.

3.4.3.3 Focus group sessions

Focus group sessions proved to be a useful method of data collection for this study, as they provided an opportunity for participants to participate actively in discussions, share insights. Furthermore, they were an ideal platform for the researcher to verify or clarify issues raised during interviews with participants. The researcher kept the groups small; the smallest and largest groups consisted of four and ten participants, respectively. Keeping participant numbers small assisted better facilitation and allowed everyone to participate in discussion. Careful consideration in terms of how the questions were framed was a priority. The researcher tried to be alert; firstly, to avoid the discussions from derailing; and secondly, to avoid the meeting becoming a session where participants felt that it was an opportunity to express their concerns about particular issues that would have no bearing on the exercise or the research. However, before the researcher posed the questions for discussion, ten to fifteen minutes were allocated to informal discussion and the raising of issues that the participants thought to be important.

For this study, six focus group sessions were held during the data-collection stage. Two focus group meetings were held at both study sites and the remaining two meetings were held with respondents to verify information from interviews as well as the focus group session.

Throughout the fieldwork and data-collection process, the researcher made notes and kept a fieldwork diary to capture aspects encountered during interviews or while engaging informally with interviewees. Research notes would usually be written down during and after interviews or, where little note-taking was done during the interviewing process, the researcher would capture this in a fieldwork diary at the end of the day. Taking down written notes was also the only option during a few interviews where the researcher's recording device either refused to work or during one interview where the device recorded for five minutes and simply stopped working without the researcher noticing.

The notes would capture aspects of the interview, the mood or attitude of the interviewee, issues that the interviewee might have struggled with or emphasised continuously, terms and definitions, external factors (where the interview took place, who else might have been observing, the date and time, etc.), as well as the main themes and observations that the researcher thought had emerged from the interview. These notes and observations proved invaluable to the researcher when there was a need to reflect back on an interview, especially during the analysis stages. This additionally assisted the researcher especially where information needed to be validated.

3.5 DEVELOPMENT OF A PRELIMINARY CONCEPTUAL FRAMEWORK

In the introductory chapters it was highlighted that this study on access draws on definitions and ideas from Ribot and Peluso's (2003) access framework, as well as other theoretical underpinnings guiding the study. A preliminary conceptual framework was introduced in *Chapter Two* for guiding the research. Conceptualisation is therefore important in terms of specifying what the research aims to achieve, as well as when particular terms are used in order to rework and refine these throughout the research process (Babbie & Mouton 2001). The preliminary conceptual framework thus provided guidance in terms of structuring the data-collection process and identifying key themes that needed to be explored. Through exploration of these themes, the researcher identified priority areas and saw the emergence of new themes. The preliminary conceptual framework guided the analysis of the findings from the fieldwork.

3.6 DATA ANALYSIS

The analysis of collected data occurred on an ongoing basis. In the field and during the transcription of interviews, the researcher was constantly grouping information and identifying possible themes that could be linked to the study's objectives. The data analysis process involves making sense of the data collected as well as preparing the data for analysis, moving deeper into understanding and representing the data, and interpreting the larger meaning of the data (Cresswell 2009). The process of data analysis that the researcher followed in the study is highlighted below (Figure 5).

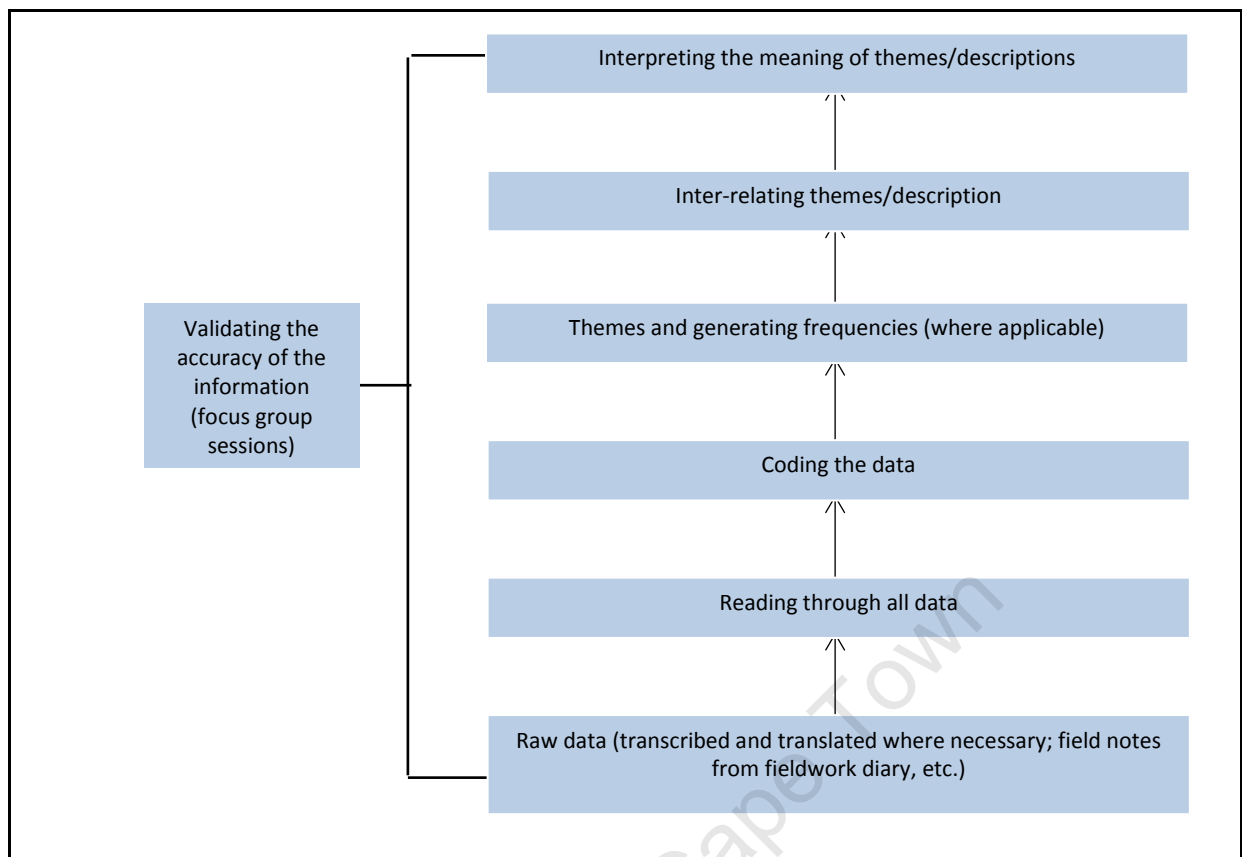


Figure 5. Data analysis process used in this study

Cresswell (2009) adds that qualitative data analysis is conducted concurrently with data gathering, making interpretations and writing reports. The information and data (more specifically the oral history interviews) from the fieldwork were transcribed and translated (where needed) by a professional transcriber. Upon receiving the transcripts from the transcriber, the researcher listened to recorded interviews, read and re-read the transcriptions to check for inconsistencies. The data from the survey were coded and entered into an Microsoft Excel spreadsheet, and averages and percentages were extracted where necessary. The major task was to organise the data in such a way that the inevitable question of ‘what to do with the data?’ could be overcome, and the researcher was able to present a coherent picture of what had emerged from the fieldwork and how this could be linked to the preliminary conceptual framework, as well as some of the theoretical notions and approaches governing the study. Some of the ‘rich’ data which emerged from the interviews were presented in verbatim form. Therefore, excerpts from transcribed oral transcripts and quotes from interviews are presented in the analysis and used as examples in this dissertation.

3.7 ETHICAL CONSIDERATIONS

Ethical considerations in the social sciences have always assumed importance: research involves collecting data from people; therefore, researchers need to anticipate the ethical issues that may arise during their studies (Hesse-Bieber & Leavey 2006; Punch 2005). As this study was concerned with access, fisheries resources, livelihoods and management approaches, *inter alia*, the researcher knew from the outset that unintended expectations could arise. Therefore, the first ethical issue that the researcher anticipated and encountered was in terms of expectations on the part of community members. This was often experienced when participants enquired about what would happen after the study was completed and how it would affect their current situation. Also during a fieldtrip before starting one focus group session, the researcher wanted to know if there were any issues of clarity or questions that participants wanted to pose before the session commenced. One individual who responded to this wanted to know if the researcher could help the community to get access to fishing sites in a marine protected area (MPA). As noted earlier, the researcher explained the objectives of the study as best as possible and, on various occasions, emphasised her limits as a student researcher and that any policy or decision-making processes was not in the ambit of the current study's objectives. Another issue linked to the researcher was that of reactivity, which is described as the influence of the researcher on the setting or the individuals participating in a study (Maxwell 1996). As the study, in some way or another, created expectations, the presence of the researcher and familiarity with some community members could have influenced responses during data collection. Eliminating the influence of the researcher is impossible; therefore, the goal in qualitative studies is not to eliminate this influence, but rather to understand and use it in the best way possible (Hammersley & Atkinson 1983). The researcher could therefore only reassure participants that they could respond to questions without inhibitions or decline to answer where they saw fit. Furthermore, the researcher informed participants that interviews would be treated with strictest confidentiality, where applicable (especially in the case where 'informal' fishing practices were discussed).

A second ethical issue arose during the fieldwork and data collection phases, related to how the study would protect the anonymity of the participants, their roles and the issues and responses that they highlighted during their interviews. Before interviews commenced, the researcher explained the objectives to participants as well as what they could be expected from the interview process. Kvale (2007) notes that interviewing in qualitative research is sometimes viewed as a moral enquiry. This may be evident where the researcher needs to consider how a sensitive interview interaction may be stressful for a participant, or how critically an interviewee may be questioned. Informed consent was therefore sought from all participants, the use and purpose of a voice recorder was explained and consent was asked to utilise the device. Participants' full names and ages were recorded and the researcher requested approval to disclose these in the study; none of the interviewees objected. However, during certain interviews, the researcher ensured anonymity where some participants spoke

about ‘informal’ fishing practices, mentioning other members in the community who were also involved, or expressed their opinions about policy and management practices and the relationship or lack thereof with management officials.

A third and final ethical issue that the researcher considered arose during the data analysis and write-up stage of the study. Creswell (2009) notes that in the interpretation of the data, researchers need to provide an accurate account of the information. The researcher therefore needed to be cognisant when presenting direct quotes and interpreting their actual meaning. In order to avoid this difficulty the researcher presented many of the direct quotes as verbatim in the recorded language and presented an English interpretation thereof. Linked to this interpretation issue, was how the data were presented to ensure that the participants’ views were expressed, and not those of the researcher. The researcher therefore needed to caution against ‘pigeonholing’ the data to fit the study’s framework, but also to present the data in the most appropriate manner, to ensure that the results would engage with the preliminary conceptual framework and key theoretical debates, and produce new understandings to ensure an authentic empirical contribution.

3.8 SUMMARY

This chapter set out to achieve three objectives. First, it described the researcher, her position and motivations for undertaking this study. Second, the study’s design and approach was discussed. Here it was highlighted that the study was situated within a qualitative research paradigm which makes use of an interpretivist approach. In some aspects it was highlighted that the study adopts some of the principles of grounded theory, as well as elements from an action-research-oriented approach. Third, the methods were described highlighting the tools of enquiry used, including a case study approach, literature review and archival information, interviews, focus group interviews and conducting a household survey. Fourth, the study’s data analysis procedures were highlighted and the study was concluded by stating certain ethical issues that emerged.

CHAPTER FOUR

THE ENVIRONMENTAL CONTEXT OF POLICY FRAMEWORKS AND REFORMS IN POST-APARTHEID SOUTH AFRICA

4.1 INTRODUCTION

The aim of this chapter is to detail the background and context of key policy and legal processes that have shaped, and continue to affect, access to natural resources in South Africa. As mentioned previously, this study set out to document and analyse key mechanisms of access in two settings of small-scale fisheries in South Africa. Specifically, this chapter provides information relevant to key environmental policies that have a bearing on access. Here, the focus is on policy reforms post-apartheid and how these have aimed to address past injustices and the unequal distribution of natural resources, including land and fisheries resources. Therefore, a brief discussion of land issues, with specific focus on the Land Reform Programme (LRP), follows.

First, a background to the environmental context in South Africa is provided. Historical information is presented that is important in terms of mapping the country's progress post-apartheid. Secondly, two major reforms are discussed, which include the policy reform that took place in the fisheries sector and the LRP, both of which shared the objective of 'righting the wrongs of the past'. The inclusion of this section has been deliberate, as the fisheries policy and land reforms that have taken place are highly relevant to the current study, but the scope of a thesis does not allow detailed discussion of other developmental reforms that have taken place across South African society. As both case studies used in this analysis are involved in land-reform processes, it is important to consider this here, together with the fact that in some instances the programme has faced extraordinary difficulties, and issues related to access to natural resources are at the core of these difficulties.

4.2 THE ENVIRONMENTAL CONTEXT

4.2.1 Historical and political influences in environmental and conservation planning

South Africa's environmental history cannot be separated from its turbulent past of colonialism and apartheid, which vastly affected natural resource access, use and distribution, and which meant that some accrued benefits that were totally denied to others. It is therefore not surprising that, historically, environmental management and biodiversity conservation in South Africa followed a protectionist approach (Wynberg 2002). This is attributed to a system that started after the arrival of Dutch settlers in 1652, who introduced restrictions on the cutting of trees and hunting of wildlife (Müller 2009). Historical records of conservation have largely been concerned with discourses on colonial

environmentalism and how, with the remarkable contribution of settlers, the environmental discourse and conservation movement was formed in South Africa (Grove 1989; van Sittert 1998).

More recent accounts tracing the history of environmental conservation and protectionist legislation and policies demonstrate how they evolved in the Transvaal⁶ as emergency regulations to counter the over-exploitation of wildlife resources through excessive hunting by white settlers (Carruthers 1993). As these settlers were not willing to acknowledge their part in the extermination of game in the Transvaal, the blame was placed on the hunting practices of black indigenous groups. This, Carruthers (1993) adds, resulted in the severe restriction of black people's access to free-ranging wildlife, by denying them legal access to weapons and making them non-eligible for hunting licences. The protectionist agenda was, however, not only motivated by conservation concerns. Political motivations are also cited as key factors behind the development of reserves and the establishment of national parks. This was demonstrated in the establishment in 1926 of one of South Africa's largest national parks, the Kruger National Park, by then president Paul Kruger. However, popular histories of nature conservation have promoted Kruger as a conservation-minded president who aspired to create a game reserve in the Transvaal from as early as 1884 (Carruthers 1989). Although Kruger's government established two game reserves, namely the Pongola Game Reserve (1894) and the Sabi Game Reserve (1898), which later became part of the Kruger National Park, Carruthers (1989; 1988) argues that Kruger did not act out of a desire to see wildlife formally protected. Rather, these reserves were established for political reasons, with Kruger responding to the appeals of officials, members of parliament and the public. The main motivations were based on perceptions of black people as being enemies of conservation who should be kept out of protected areas (Carruthers 1989).

These discriminatory sentiments were, however, not contained to the land sector, but also manifested in coastal areas. Historically, and especially during apartheid, vast regions along the country's coast were included within the 'homeland'⁷ areas. Sunde (2011) adds that in these traditional authority areas, rights to access coastal and fisheries resources were linked to land tenure and social relations within the community (Sunde 2011). While literature on historical systems that governed access to and the use of coastal and fisheries resources is lacking in South Africa (except for the work undertaken by historian Lance van Sittert 2001; 2002), Sunde (2011) adds that research in the land sector and more recent work on coastal resources is making it clear that despite state regulations, customary systems were the *de facto* legal system operating during the 20th century in many parts of

⁶ The 'Transvaal', which was situated north of the Vaal river, was a province of the Union of South Africa (1910 - 1961) and later the Republic of South Africa, until the end of apartheid in 1994, when it was officially subdivided.

⁷ The homelands policy under the apartheid government set aside territories for occupation by black African inhabitants of South Africa. These areas, termed 'homelands', later became known as the 'Bantustans'.

the country. These systems were able to continue as they remained somewhat ‘contained’ within the homelands and neglected in the country’s overall environmental concerns.

The perceptions highlighted above have therefore been perpetuated in popular discourses of environmental management and conservation in South Africa. As a result, the development path of environmental and conservation priorities has been determined by a species and ecosystems conservation approach and, more recently, by notions of sustainable development (Müller 2009). With the advent of democracy in South Africa and the country’s re-admission into the international community, the deep inequalities woven into the legal fabric of environmental legislation and management needed to be addressed. Furthermore, perceptions about the environment, and the protectionist approaches that regarded people as separate from nature, demanded urgent attention in the government’s post-apartheid environmental planning and development (Wynberg 2002).

4.3 NEW ENVIRONMENTAL GOVERNANCE REGIME FOR SOUTH AFRICA

South Africa, like many developing countries, has the dual task of securing economic development to help meet the needs of its population, while ensuring equitable and sustainable distribution and use of its natural resource base (Hall 2010; Walker *et al.* 2010). Striking a balance between these two objectives remains a challenge. To address the wrongs of the past, a very progressive Constitution as well as several key policies have been developed and implemented (Section 25(4) makes reference to access to natural resources). These are underpinned by human rights principles with a strong emphasis on social justice. No discussion of the environment and natural resources in South Africa is complete without reference to the Constitution and the environmental rights contained therein (Cousins *et al.* 2007). Section 24 of the Constitution (Act 108 of 1996) states that:

“Everyone has the right –

- (a) to an environment that is not harmful to their health or wellbeing; and
- (b) to have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that –
 - (i) prevent pollution and ecological degradation;
 - (ii) promote conservation; and
 - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”

The new democratic government inherited a fragmented and uncoordinated governance system, including several laws, policies, guidelines and procedures that entrenched unequal access to resources. Thus, the major challenge was the need for an overhaul of many pieces of legislation (Müller 2009; Wynberg 2002; Barnard 1999). The National Environmental Management Act (NEMA) (No. 107 promulgated in 1998) gives effect to the obligations afforded by the 1996 Constitution and creates the framework for environmental management and conservation in the country (Van der Linde 2009). Various other environmental laws, including the National Forest Act (NFA) (84 of 1998), the National Environmental Management: Biodiversity Act (NEM: BA) (10 of 2004) and the National Environmental Management: Protected Areas Act (NEM: PAA) (57 of 2003), among others, all have a bearing on environmental management and biodiversity conservation.

NEMA (107 of 1998) gives effect to Section 24 of the Constitution and highlights a number of relevant principles for expanding access to natural resources, including marine and coastal resources. Especially relevant for greater and equitable access to natural resources is section 2(4) (d) of the policy, which states that “equitable access to environmental resources, benefits and services to meet the basic human needs and ensure human well-being must be pursued and special measures may be taken to ensure access thereto by categories of persons disadvantaged by unfair discrimination.” NEMA’s principles are based on, and largely reflect, international principles that recognise the right to access to marine and coastal resources, but are specific to the South African context and recognise the inclusion of and provisions made for access for historically disadvantaged individuals (HDIs). Other significant policies and laws pertaining to marine and coastal resources include the Marine Living Resources Act (MLRA) (18 of 1998)⁸, the White Paper for Sustainable Coastal Development (2000) and the National Environmental Management: Integrated Coastal Management Act (NEM: ICMA) (24 of 2008). The latter two legislative pieces are relevant for access as they include important principles of fairness, equity and justice (Glazewski 2005). Key principles in the White Paper on Sustainable Coastal Development (2000): (a) acknowledge that the coast is a national asset and belongs to all citizens of the Republic; and (b) promote (i) economic development; (ii) social equity; (iii) integration and participation of citizens; (iv) co-operative governance; and (v) cultural heritage (DEAT 2000: Chapter 6).

In keeping with the principles of greater access and equity, the ICMA (24 of 2008) stresses the need to ensure that the use of the country’s coastal region is socially and economically justifiable as well as ecologically sustainable (Cilliers *et al.* 2009). The act stresses the importance of ensuring that physical access to coastal areas is not compromised, and Sections 23 and 24 empower the Minister to declare and designate ‘special management areas’ which can facilitate the management of coastal resources by local communities (Government of the Republic of South Africa 2008a). These

⁸ A more detailed discussion is presented in section 4.4.3.

provisions are especially important as they recognise the livelihoods of communities who are dependent on coastal resources.

South Africa is signatory to several international and regional agreements and obligations. These include the Convention on Biological Diversity (CBD), which aims to conserve and promote the sustainable use of the world's biodiversity. As part of its obligations under the CBD, South Africa has developed a National Biodiversity Strategy and Action Plan (NBSAP), which has formed the basis of a National Biodiversity Framework (NBF) (see Table 2 for additional examples of international instruments to which South Africa is committed). The NBF seeks to conserve and manage biodiversity to ensure sustainable benefits to the people of South Africa, through co-operation and partnerships that build on strengths and opportunities. The strategic principles of the NBSAP can be summarised as follows:

- An enabling framework integrates biodiversity into the socio-economy;
- Biodiversity contributes to socio-economic development and sustainable livelihoods;
- Biodiversity, including species, ecosystems and ecological processes, is effectively conserved across the landscape and seascape, with a focus on biodiversity priority areas;
- South Africa's international obligations are met where this is feasible and in the national interest;

A cross-cutting principle which relates to all of the above is: Enhanced institutional effectiveness and efficiency ensures good governance in the biodiversity sector⁹.

The NBF has played a meaningful part in developing the environmental components of the New Partnership for Africa's Development (NEPAD)¹⁰. Other key environmental and development agreements include: formal adoption of Agenda 21 (which prompted the development of a national strategy for sustainable development); the commitment of substantial resources to meet the Millennium Declaration and Millennium Development Goals (MDGs); and hosting of the 2002 World Summit on Sustainable Development (WSSD) in Johannesburg. Consequently, South Africa is obliged to ensure that the goals and objectives of these agreements and commitments to which it is party or signatory, are met and implemented in accordance with its national strategies, plans and programmes (Alogotsson 2009).

⁹ DEA: National Biodiversity Strategy and Action Plan. (Available online: http://www.environment.gov.za/?q=content/strategic_docs/national_biodiversitystrategy_actionplan) Accessed 12 October 2012)

¹⁰ DEAT 2006.

Table 2. South Africa's engagement in multilateral environmental agreements (source: DEAT 2006:62).

| Multilateral environmental agreement | Status |
|---|---|
| United Nations Framework Convention on Climate Change | Signed: 15 June 1993 Ratified: 29 August 1997 Kyoto Protocol: acceded to in July 2002 |
| CBD | Ratified: 2 November 1995 |
| Convention for co-operation in the protection and development of the marine and coastal environment of the East and Central African region and related protocol (Abijan Convention) | Ratified: 5 November 2002 (acceded) |
| Convention for the protection, management and development of the marine and coastal environment of the East African region and related Protocols (Nairobi Convention) | Ratified: 5 November 2002 (acceded) |
| Convention concerning the protection of the world cultural and natural heritage (World Heritage Convention) | Ratified: 10 July 1997 |
| Southern African Development Community (SADC) protocol on fisheries | Signed: 14 August 2001 Ratified: July 2003 |
| SADC protocol on wildlife conservation and law enforcement in the SADC community | Signed: 18 August 1999 Ratified: October 2003 |

The Department of Environmental Affairs (DEA) is the lead institution responsible for environmental management and biodiversity conservation countrywide, but it shares this responsibility with other national departments as well as provincial and local authorities (DEAT 2006). At a broad political and strategic level, however, cabinet and directors general of DEA and other relevant departments remain responsible for making decisions across national departments, in addition to the Committee for Environmental Coordination (CEC), which was established in terms of Chapter 2 of NEMA and comprises directors general of various national departments, the heads of provincial environmental departments and representatives from local government (Burns & Kidd 2009; Wynberg 2002). The development and implementation of environmental legislation is a complex process and involves the spectrum of institutions and organs of state highlighted above. It includes statutory and non-statutory bodies as well as traditional authorities¹¹. National government is the highest authority with the most legislative powers, while provincial government plays a key role in implementing legislation, and developing and co-ordinating environmental functions at a provincial level. In South Africa, the functions of local government include providing services to communities in a sustainable manner, promoting social and economic development, and encouraging community involvement in issues of

¹¹ Traditional authorities and leadership are especially operative in land held under communal tenure, and while the role of traditional leadership has been contested, politically it is incorporated into democratic structures (Cousins *et al.* 2007). Chapter 12 of the Constitution recognises “the institutions, status and role of traditional leadership, according to customary law”, but this recognition is subject to the Constitution.

governance (Cousins *et al.* 2007). The role of traditional leadership (which is acknowledged in the Constitution) sees traditional councils and/or traditional leaders involved in activities relating to arts and culture, land administration, the management of natural resources and the dissemination of information relating to government policies. Furthermore, these traditional authorities and leaders may provide inputs on behalf of their communities at various management meetings and forums. Therefore, other than the range of stakeholders involved in policy development and implementation highlighted above, statutory and non-statutory bodies include community representation, NGOs, and community-based organisations (CBOs) which play a role in decision-making about access and the use of resources, mediating conflict and resolving tensions arising out of communal property (Cousins *et al.* 2007).

It is therefore acknowledged that meaningful participation by all sectors of society is crucial for environmental governance (DEAT 2006). Citizen participation and representation in environmental decision-making have been promoted and advocated since the transition to democracy. While substantial public participation has taken place in environmental policy development, less has occurred in environmental decision-making (Rossouw *et al.* 2003). In the past, poor, disadvantaged, rural and indigenous communities have been excluded from decision-making. To some degree, they are still severely constrained by limited access to information, communication networks and transport, and are therefore inhibited from participating fully in participatory processes (DEAT 2006). As a party to the CBD, South Africa has emphasised its commitment to upholding element 2 of this document, which commits signatories to the ensuring the full participation of their citizens and traditional communities in the management of the environment (DEAT 2006).

While South Africa has made significant progress in developing policies to address environmental priorities, the debilitating legacies of colonialism and apartheid, coupled with contemporary environmental concerns and pressure to ensure and promote sustainable access to natural resources, still present various challenges. Coupled to these challenges are state driven, top down-decision making as well as the natural science paradigms which continue to dominate environmental governance and decision making processes in South Africa. The next section of this chapter focuses on the fisheries transformation process and the LRP. While both sectors have come up against various challenges, understanding transformation processes remains crucial in contextualising and understanding processes of access to natural resources at the case study sites.

4.4 FISHERIES POLICY AND MANAGEMENT IN SOUTH AFRICA

The reform of the fisheries sector in South Africa after the advent of democracy has been a difficult process fraught with challenges. The introduction and implementation of a new fisheries policy in 1998 was only the beginning of a long reform process that is still continuing. Post-1994, there were

great expectations among coastal communities that the ANC would address their socio-economic needs and their rights to access marine resources. The ANC's Reconstruction and Development Programme (RDP)¹², which was described as an integrated, coherent socio-economic policy, highlighted that "the primary objective of fisheries policy is the upliftment of impoverished coastal communities through improved access to marine resources and the sustainable management of those resources through appropriate strategies"¹³. These sentiments were articulated in various policy statements as well as the new Constitution (1996), which incorporated the principles of "equitable access to natural resources, access to information, involvement of the public in decisions and management".

The section that follows provides an account of the changes that took place in South Africa's fisheries governance regime post-apartheid. Here, the aims are: first, to provide a brief historical account of fisheries management in South Africa; second, to highlight the major policy and legislative changes that have occurred; and third, to contextualise and set the scene for subsequent chapters, which introduce the case study sites and address how legal reforms have shaped and continue to impact on small-scale fisheries and people's ability to access resources.

4.4.1 Background to fisheries management in South Africa

It is now widely recognised that with the fall of the apartheid system, the democratically elected government of South Africa faced enormous challenges and inherited a legacy of poverty and skewed distribution of the country's natural resources. It is therefore impossible to conceptualise access to fisheries and coastal resources without considering the political history that has framed resource use patterns and property rights regimes in the country (Hauck & Sowman 2001). The fishing sector, though described at the fall of apartheid as performing reasonably well in economic terms, had various inequalities that needed to be addressed (Hersoug & Holm 2000). Following more than 40 years of apartheid and 300 years of colonial dispossession, the fishing sector was left with uneven distribution of rights between the white and black populations, a skewed distribution of fish resources between small- and large-scale operators, and a fisheries authority that was dominated by white administrators and had little legitimacy among the predominantly black¹⁴ coastal communities (Isaacs 2004; Hauck & Sowman 2003; Hersoug & Holm 2000).

¹² The RDP was a socio-economic policy framework, implemented by the ANC government under President Nelson Mandela in 1994. The ANC's chief aim in developing and implementing the RDP was to address the immense socio-economic problems brought about by its predecessors under the apartheid regime. The RDP specifically aimed to alleviate poverty and address the massive inequalities in social services across the country.

¹³ ANC. The Reconstruction and Development Program (RDP): A policy framework. Johannesburg, 1994b.

¹⁴ Defined to include people of black African, coloured and Indian descent.

Various policies and legislation of the colonial and apartheid regimes, including the Black Land Act 27 of 1913, the Development Trust and Land Act 18 of 1936, the Coloured Labour Preference Policy (1955), the Group Areas Act 41 of 1951, and the 'Homelands' Policy, all effectively denied the majority of black South African citizens access to and ownership of vast stretches of South Africa's coastline and resources, and forced them to reside in designated areas in cities and the homelands (Hauck & Sowman 2001). While these policy interventions shaped settlement patterns across the country, the objectives of these acts, such as the Coloured Labour Preference Policy (1955) for instance, had a particular impact on the Western Cape in that they attempted to exclude 'Africans' from living in the province (Cardoso *et al.* 2006). As a result, many settlements along the West Coast of South Africa are predominantly inhabited by coloured communities. According to Van Sittert (2003), before democratisation and during the colonial period, both black and coloured 'informal' fishers were engaged in the harvesting a variety of coastal resources, but due to discriminatory legislation introduced and the promotion of white ownership of the fishing industry, they had no legal access to these resources. Towards the end of apartheid it became possible for this group to gain such legal access by acquiring recreational or commercial licenses, but they were still denied access to the resources that they traditionally harvested because their harvesting methods and the quantities required to benefit did not conform to the conditions of the recreational permits, and they simply could not afford the commercial license fees (Harris *et al.* 2002).

In the commercial fishing industry, the skewed patterns of distribution were even more evident as the quota distribution of the total allowable catch (TAC) of species was also dominated by a small number of large companies that had access to the bulk of resources. One of the major constraints in gaining access to the commercial fisheries sector was access to capital and equipment (Cardoso *et al.* 2006). This effectively excluded the majority of fishers from gaining access to a portion of the TAC. Isaacs and Gervasio (2012) note that unlike the rest of Africa, Asia and Latin America, South Africa developed a robust commercial industry long before it developed an artisanal/ small-scale commercial sector or considered the role of these fishers in the commercial sector. South Africa's fishery sector has therefore been industrialised since the early 1900's (Isaacs & Gervasio 2012) and fully utilizing marine resources, leaving poor fishers with no legal access and little or no opportunities. In addition, this also meant that participation in the fishing industry remained in the hands of the wealthy, limiting the ownership rights of blacks to natural resources (Martin & Raakjaer-Nielsen 1997).

4.4.2 Developing a new fisheries policy (1996 - 1998)

When the newly elected government came into power, stated goals such as ensuring the "upliftment of impoverished coastal communities through improved access to marine resources" created enormous expectations among many marginalised fishing communities (Isaacs 2006). As with many other sectors of the economy, the predominant issue in the fisheries sector was access and ownership.

Therefore, the challenge that the government faced was to formulate a new fisheries policy to replace the Sea Fisheries Act of 1988. A major objective of this new act was to address the issue of the redistribution of access rights to primarily historically disadvantaged communities who were denied these rights in the past.

The process of establishing a fisheries policy was initiated by the Minister of Environmental Affairs and Tourism in October 1994. It was decided that a Fisheries Policy Development Committee (FPDC) would be established and tasked with preparing a Green Paper and subsequent White Paper on the new fisheries policy (Martin & Raakjaer-Nielsen 1997). The committee comprised five representatives from each of the 13 fishing industry sectors, one representative from each maritime province, and one representative from the Ministry (70 members in total).

The first objective of the FPDC was to request all stakeholders to submit their ideas for a first integrated document. This document was discussed at several subsequent meetings to identify areas of agreement (Isaacs 2004). The issue of access rights and transferability was contentious; to try to address this, the FPDC proposed transferable rights, granted for perpetuity, but was not specific about how the nature of access rights and how the Individual Transferable Quota (ITQ) system was supposed to bring about redistribution in favour of disadvantaged groups (Hersoug & Holm 2000). A key recommendation from the panel stated: People in coastal communities, within specified areas and zones and within sustainable limits and appropriate fishing management constraints, would have access to local marine resources in order to provide for their subsistence needs according to traditional patterns of use.

This proposal, with some modification, was written into the White Paper, which was presented to Parliament by May 1997 (Hauck & Sowman 2001; Isaacs 2004). Contrary to the normal procedure, however, the writing of a Bill on the new fisheries policy did not await the responses of the White Paper. As a result of pressure to produce immediate outcomes, the “Marine Living Resources Bill” was prepared.

By the end of September 1997 the Bill was introduced to the Portfolio Committee of the South African Parliament, and was passed with only technical amendments. The corresponding act, the MLRA, became effective in June 1998.

4.4.3 The Marine Living Resources Act (MLRA) of 1998

In South Africa, legislation that deals with living marine resources is contained within the MLRA of 1998. The MLRA advocated three overall goals including the sustainable use of resources, equity and stability in the fishing industry. Hara and Raakjaer-Nielsen (2009) link these three goals and note that they could also be understood in terms of three broad institutional orders. These include the state,

society and the market. Therefore, Isaacs (2004) adds, the scientists were advocating the goal of sustainability, business was focusing on stability in the fishing sector, and the task of equity was ‘assigned’ to government. The MLRA incorporated a set of objectives that would guide government in ensuring equity within the sector, some of which include:

- The need to conserve marine living resources for both present and future generations;
- The need to apply precautionary approaches in respect of the management and development of marine living resources;
- The need to utilise marine living resources to achieve economic growth, human resource development, capacity building within fisheries, employment creation, and a sound ecological balance consistent with the development objectives of the national government;
- The need to achieve practicable, broad and accountable participation in the decision-making processes;
- The need to restructure the fishing industry to address historical imbalances and to achieve equity within all branches of the fishing industry (MLRA 1998:2).

From the outset, the implementation of the new act faced several challenges. These were mainly in the form of transformation and restructuring, as there was little consensus on just how these processes should occur (Isaacs 2006, Witbooi 2006). In society and among ordinary fishers, transformation meant that access would be significantly expanded to the historically disadvantaged sectors of society who were supported by the MLRA (Section 18(5)). However, the official interpretation of transformation meant that any historically disadvantaged individuals (HDIs) were eligible for access rights irrespective of their historical links to fishing (Isaacs 2006). This interpretation allowed leeway and resulted in many ‘*bona fide*’ fishers being left out of the rights allocation process in favour of HDIs in general. Moreover, the attainment of the goals of the MLRA was further constrained by limited resources to accommodate all the new entrants who wanted access rights and fears expressed by the established market that allowing more entrants would destabilise the industry (Isaacs 2004). The enabling environment created by the Act therefore meant that the state was flooded beyond its capacity with an onslaught of new applications (Witbooi 2006; Kleinschmidt *et al.* 2003). This resulted in delays in access rights allocations to those who needed it most (Isaacs 2006). Many community members, activists and NGOs representing fisher communities made their objections clear about the policy. Some of these comments included: “many fishers have been left out of the process and have found themselves unable to be recognised as having a history of harvesting or as a sole livelihood occupancy”¹⁵. Those representing their communities reiterated: “traditional fishing

¹⁵ Andy Johnson, fisher representative and community activist.

communities just want to be able to catch fish in order to put food on the table and to pay amenities and other living costs. We do not want to be rich. We merely want to make a living. This policy does not allow us this.”¹⁶

Thus in general, the process of rights allocation in terms of the MLRA was perceived as flawed as it failed to produce any major reallocation of access rights to new entrants or to those it aimed to include (Isaacs 2006). Furthermore, the MLRA and its objectives of sustainable development, stability and equity were seen as conflicting, with the former two objectives favoured over the latter (Isaacs 2006). Compounding this, there was also speculation and controversy during this period (1999 - 2000) within the fisheries management authority, Marine and Coastal Management (MCM) in the Department of Environmental Affairs and Tourism (DEAT), over allegations of corruption and mismanagement (Hersoug & Isaacs 2002). While there were some who viewed the fisheries transformation process as remarkable (Branch & Clark 2006), others believed that the process excluded those who it needed to target, as well as those traditional fishers who remained excluded from formally accessing marine resources (Hauck 2008; Harris *et al.* 2007; Cardoso *et al.* 2005). The managing authority was therefore under pressure to identify more appropriate measures for rights allocations and to develop a new management system that would enable the participation and inclusion of poor traditional fishers. This recognition and protection of historically marginalised people, including coastal and fishing communities, are also contained in various policies, including:

- The South African Constitution (1996) which “guarantees socio-economic rights including the right to access sufficient food”;
- NEMA (1998) which “provides that the State must respect, protect, promote and fulfil the social, economic and environmental rights of everyone and strive to meet the basic needs of previously disadvantaged communities”;
- ICMA (2008) which identifies that the state is the trustee of coastal areas and “must ensure that coastal areas are used, managed, protected, conserved and enhanced in the interest of the whole community and should take whatever reasonable measures it considers necessary to conserve and protect coastal areas for the benefit of present and future generations”.

Although the MLRA recognised subsistence fishing, it failed to adequately define this new sector and lacked input in terms of how to manage this sector. Apart from the lack of adequately defining the sector there were gaps in information regarding how many people were involved in and dependent on

¹⁶ Naomi Cloete, Chairperson of the West Coast region of Coastal Links, quoted in a media statement by Masifundise Development Trust, March 2007.

activities within this sector. Research undertaken by the Subsistence Fisheries Task Team in 2000 (Clark et al., 2002; Branch et al., 2002) estimated that there were approximately 30 000 fishers consisting of approximately 28 000 households that were dependent on subsistence fisheries (Clark et al. 2002). However, this number is likely to be an under-estimate (MDT 2010) and Raemaekers (2010) notes that during the drafting of the small-scale fisheries policy (discussed below), the estimates came closer to 100 000 people directly involved in small-scale fishing. To elaborate on the management of this group of fishers, the Subsistence Fisheries Task Group (SFTG)¹⁷ was appointed.

¹⁷ The SFTG comprised two groups: the core group of 17 members with divergent areas of expertise, and the consultative group of 20 members who provided information and support to the core group (Isaacs 2004).

4.5 DEFINITIONS OF SUBSISTENCE AND SMALL-SCALE COMMERCIAL

While the MLRA acknowledged subsistence fishers as a new legal category of fishers (Section 19), it was inadequate, as it did not clarify who qualified for subsistence rights (Harris *et al.* 2002). The MLRA defines a subsistence fisher as “a natural person who regularly catches fish for personal consumption or for the consumption of his or her dependants, including one who engages from time to time in the local sale or barter of excess catch, but does not include a person who engages on a substantial scale in the sale of fish on a commercial basis” (Government of the Republic of South Africa 1998a). This definition did not sufficiently characterise these users, nor did it provide sufficient precision for practical or legal implementation (Cardoso *et al.* 2006). The granting of rights lies within the ambit of the Minister’s powers; therefore, in order to achieve the objectives contemplated in the Act, the Minister may:

- (a) Establish areas or zones where subsistence fishers may fish;
- (b) After consultation, declare:
 - (i) A specified community to be a fishing community, from which inhabitants may be declared to be subsistence fishers;
 - (ii) Any other person to be a subsistence fisher;
 - (iii) Any other fishing or related activity or the exercise of any other right in that area or zone to be prohibited (MLRA; Government of the Republic of South Africa 1998a:19).

Appointed in December 1998, the SFTG was assigned with the key task of providing recommendations on the definition and identification of subsistence fishers. Through several extensive debates, the SFTG needed to identify the defining characteristics of small-scale fisheries. Based on research in 143 fishing towns and villages, the SFTG reached the conclusion that the definition used in the MLRA (1998) was “unsatisfactory for several reasons. It is difficult to use it to distinguish people who could genuinely be regarded as subsisting on the resources to meet the basic needs of life, from those who desire to earn a living out of selling the resources” (Sunde & Pedersen 2007; SFTG 2000). It was also established at the time that both artisanal and subsistence fishers were likely to be managed by the same process; therefore, there seemed to be little merit in separating them (SFTG 2000). The SFTG recognised that there was a group of artisanal fishers that fished on the lower end of the commercial spectrum and that they required specific attention and “cannot simply be lumped with large-scale industrial fisheries” (SFTG 2000). For this reason, the SFTG recommended that the term ‘small-scale commercial’ be used (Sunde & Pedersen 2007).

However, this definition of small-scale commercial was cited as an inadequate reflection of the socio-economic conditions and realities or the socio-cultural practices of fishers (Isaacs 2006; Sowman 2006). According to Cardoso *et al.* (2006), it did not fully encompass the spectrum of fishers on the coasts of South Africa, especially those with long-standing histories of involvement in fishing. Furthermore, “this classification system creates problems because fishers from poor coastal communities seldom fall neatly into one or other category because they employ a range of livelihood strategies to survive” (Cardoso *et al.* 2006). Sunde and Pedersen (2007) envisaged: “an over-arching approach in terms of ‘small-scale fisheries’, is adopted as this is broad enough to accommodate a range of fishers from those who harvest predominantly to put food on the table to those who operate on a small-scale commercial basis in order to sustain their traditional livelihoods”. They add that such an approach would allow space for different overlapping livelihood strategies and therefore “accords fishers their rights to their livelihoods without further marginalising and discriminating against them by putting them into static and limiting categories” (Sunde & Pedersen 2007).

4.6 DEVELOPING AN EQUITABLE FISHERIES POLICY

4.6.1 The Equality Court order

After the initial implementation and demands by fisher communities and NGOs based on the inadequacies of the MLRA, there was acknowledgement from the fisheries authorities that certain fishers and communities were not sufficiently catered for under the policy. Research and experience in terms of the implementation of the MLRA demonstrated that many small-scale fishers claimed that they were excluded from gaining legal access to fisheries resources and forced to harvest resources ‘illegally’ (Isaacs 2004; Hauck 2008). These sentiments were documented at the Fisher Peoples Human Rights Hearings held during August 2003 in Cape Town, which was facilitated by Masifundise Development Trust (MDT), a fisher NGO based in Cape Town. These hearings gave fishers the opportunity to highlight their grievances and reiterate to the authorities that their right to food security and livelihoods was under threat. Coupled to food security and livelihoods was the very essence of what fishers believed that they have been called to do and how they identified themselves and fellow fishers. As articulated by a fisher at the hearings: “it’s very easy to identify a fisherman ... we have to see who are the fishermen. We’ll cut through the veins and if there is blood coming out of that vein they are not a fisherman, if there is salt water coming out of that vein they are a fisherman” (Sunde 2003). The ongoing failure to address the needs of these fishers and information gleaned from the hearings culminated in the initiation of a court case in 2004 by traditional fishers who believed that they had a legitimate right to access marine resources. Supported by the LRC, the case of Kenneth George and others versus the Minister of Environmental Affairs and Tourism (DEAT) focussed on fishers’ rights to secure a livelihood and was settled in an out-of-court agreement in 2007.

The judge signed a court order stating that the parties concerned would engage in preparing a new legislative and policy framework that would include all traditional fishers in South Africa (Sunde *et al.*, 2011). The Minister agreed to embark on this new participatory policy process and also issue 'Interim Relief Permits' (IRPs) to traditional fishers while the process of establishing a comprehensive policy was under negotiation. By using the recreational TAC allocation, the court order allowed the Minister to give traditional fishers IRPs that depart from the normal regulations (i.e. allowing them access to the sea and to catch a maximum of 20 crayfish on any given day of the week and a combination of 30 specified line-fish per day) (MDT 2008). This catch was allowed to be sold, which is not normally allowed under the recreational fishing regulations, and it was stipulated that only a maximum of 1 000 fishers who met stringent criteria could benefit from this concession. IRPs were issued to individuals identified by the fishing community and, in order to evaluate this process, local monitors were employed and trained to ensure that the individuals adhered to the permit conditions. Since 2008, approximately 1 400 fishers in the Western and Northern Cape have received annual IRPs. In 2010 the IRP was extended to a small group of net fishers (Sowman *et al.* 2011), which includes individuals in the Ebenhaeser community. It is envisaged that the IRPs will be awarded to fishers until such time that the Small-Scale Fisheries Policy (SSFP) is implemented.

4.6.2 The process of developing a small-scale fisheries policy

Following the Equality Court ruling, government and civil society embarked on a process to develop a new policy. The drafting of a policy that specifically catered to the needs of traditional and small-scale fishers came at a time of great importance when fishers and fisher communities were demanding that their livelihoods, access to food security and economic as well as cultural norms were recognised. The preamble to the SSFP recognises the limited scope of the MLRA definition of subsistence and that it had effectively excluded artisanal and small-scale fishers. Furthermore, it recognises that those individuals involved in pre- and post-harvesting activities had also been excluded. These limitations have major implications for women involved in the sector. Moreover, the development process ensured that fishers and their representatives were involved in the drafting of the new policy, together with other stakeholders including NGOs, academics and researchers, environmentalists, politicians, local authorities and the general public. The policy is underpinned by a set of principles that broadly conform with 'good governance' principles (Sowman *et al.*, 2011). The primary objective of the policy is to ensure a fundamental shift in the government's approach to the small-scale fisheries sector. By drawing insights from a range of stakeholders, the small-scale fisheries policy has the strategic objectives summarised in Box 1, overleaf.

Box 1. Objectives of the SSFP

- Give formal recognition and appropriate legal protection for small-scale fishers through the allocation of rights;
- Promote equitable access to and benefits from marine living resources, taking the historical background into account;
- Improve access to marine living resources through mechanisms that allow preferential access, including the designation of strips of land as coastal access;
- Co-manage the small-scale fisheries sector and applicable marine living resources in an integrated and holistic manner, recognising national management protocols while responding to local contexts;
- Ensure the long-term sustainable use and management of marine living resources and surrounding coastal environments;
- Ensure the sustainable development of fisheries identified as small-scale, making sure that small-scale fishing communities maximise the benefit from those resources and are the main beneficiaries;
- Facilitate the establishment of appropriate institutional arrangements at different spheres of government, in particular co-management arrangements, in order to give effect to the policy;
- Facilitate co-operative governance with relevant government departments involved in fishery dependent communities to promote poverty alleviation, food security, sustainable livelihoods and local economic development;
- Facilitate the establishment of mechanisms that will address physical access for small-scale fishing communities to harbours, defense or other strategic facilities and marine protected areas when exercising their right to fish;
- Inform the process of amending the MLRA (No. 18 of 1998);
- Introduce measures and mechanisms that prioritise the small-scale fisheries sector within fisheries as a whole;
- Introduce mechanisms and structures that promote a community-oriented, co-management and community-based approach in the harvesting and management of marine living resources within the small-scale fisheries sector.

Source: DAFF 2012.

The policy's vision highlights the simultaneous need to: (i) address ecological sustainability of the resource, and (ii) provide for the progressive realisation of human rights within the affected communities¹⁸. Thus, the new policy introduces a paradigm shift and new governance approach to the small-scale fisheries sector. The fisheries authority recognises that the new approach must address the ecological sustainability of the resource, and concurrently address the progressive realisation of human rights and developmental objectives, recognising current economic realities. However, from various reviews during its development and submissions submitted on draft versions, key components of the policy have been analysed during several meetings between policy-makers, researchers and

¹⁸ Section 2.2, South African Small-Scale Fisheries Policy (DAFF 2012).

other stakeholders. Some of the areas that have received attention are highlighted in the section below.

4.6.2.1 Principles of participation

In the new policy, co-management is viewed as a mechanism to promote community participation in resource management and projects. The policy proposes a shift away from past management approaches to one that emphasises community involvement in management and decision-making consistent with the principle of participation in NEMA (section 2.4(f)): “Participation deliberately aims to alter existing power relations in favour of the poor and marginalized” (MDT 2007). Transformational participation is seen to hold the potential of strengthening as well as improving fisheries management; therefore it is important that it is understood, acknowledged and incorporated in the process of implementing a new fishing policy for the small-scale sector (MDT 2007).

4.6.2.2 Policy objectives

The policy’s strategic objectives (Box 1) highlight the need to adopt an integrated, community-oriented and rights-based allocation system. This system would recognise the need to ensure the ecological sustainability of the resource, identify small-scale fishers as a category of fishers for the purposes of the MLRA in law, and provide for community orientation in the management of resources harvested by these fishers (DAFF 2012). The policy would furthermore adopt a developmental approach and rights-based allocation system (DAFF 2012).

4.6.2.3 Allocation of rights

The policy under Section 6.1 proposes a community-based system of rights allocation through a community-based legal entity that will allocate the right to fish to selected members of the community. Furthermore, as set out in the policy, the criteria for belonging to a community-based legal entity include:

- South African citizenship (male or female);
- Age 18 years of age or older (in the case of child-headed households, a guardian will be appointed to represent them as a member of the legal entity);
- The harvesting the resources directly or involvement on a daily basis in operations such as processing or marketing of the resources (unless physically disabled);
- Direct historical involvement in the small-scale fisheries sector (through 10 years’ experience at any one time, but not necessarily over the past 10 years);

- Historical involvement in traditional fishing operations, which include catching, processing or marketing marine living resources;
- Major part of livelihood derived from small-scale fishing or traditional fishing operations, and historical dependence on marine living resources either directly or in a household context, to meet food and basic livelihood needs;
- Not permanently employed;
- Subsist from the catch or engaged in the sale or barter or in semi-commercial activity.

Some concerns regarding the above proposal include that the decisions about who obtains the right to fish will be left to the local fisher community to decide, which could result in certain fishers being unable to fish within their own area and conflict within communities (Parliamentary Research Group 2011). Furthermore, the IRPs that were introduced have promoted an individual-rights-based system that will be difficult to change.

4.6.2.4 Institutional arrangements and co-management

In the policy, a multi-tiered organisational model is suggested under Section 5.2. This model would incorporate representatives from all three spheres, including government at national level, working groups at the second level, and committees and community-based entities at local level. Figure 6 illustrates this model and its proposed activities at each level.

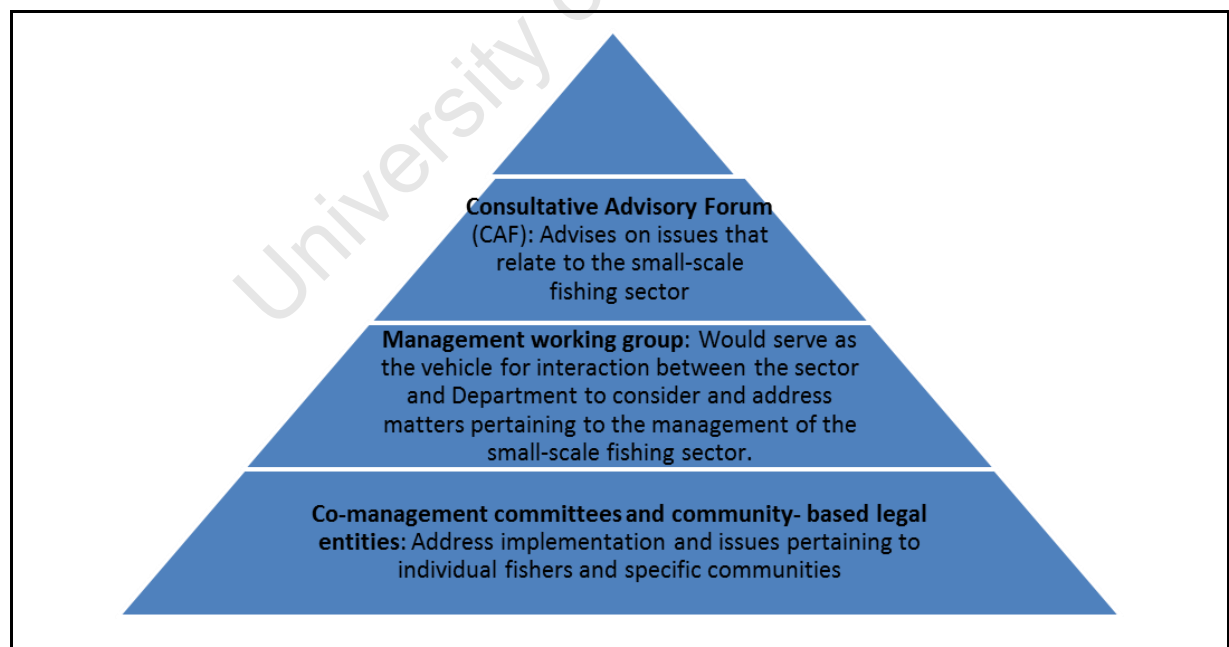


Figure 6. Multi-tiered organisation model (adapted and based on the description in the policy for small-scale fisheries 2012, Section 5.2).

It is envisaged in the policy that co-management committees consisting of all the relevant stakeholders will be formed. However, it is now well documented in research on co-management in South African fisheries and elsewhere that the issue of institutional capacity is key; locally, these arrangements have seen varying degrees of commitment from the national fisheries authority (Hauck & Sowman 2003). Hauck (2008), therefore, cautions that the institutional arrangements at national level have not adequately changed for fishers to engage effectively with management and take on more decision-making functions. Therefore, for co-management to succeed devolution of management responsibility becomes a necessity and this requires capacity-building of those institutions that have been devolved responsibility (Masifundise 2007).

Although the fisheries transformation process has been fraught with difficulties, involved stakeholders believe that there has been a measure of transformation, including an increase in access to resources for previously disadvantaged groups (Isaacs 2011; 2006). Recent developments, including the formulation of the new policy and interim relief measures, are positive in terms of transforming the sector (Hauck 2008). Sowman *et al.* (2011), however, note that a key constraint to embracing this new small-scale fisheries paradigm in South Africa is dominated by neo-liberal macro-economic policy: i.e. growth, employment and redistribution (GEAR), which aims to stimulate economic growth, reduce inflation and the budget deficit, and enhance the flow of foreign revenue by reducing state control and deregulation of financial markets. Thus, balancing issues of poverty and food security against economic growth, efficiency and stability in the industry is proving challenging (Isaacs 2006; Sowman 2006; Van Sittert *et al.* 2006). Another major challenge, Cockcroft *et al.* (2002) notes, is linked to addressing past inequities, addressing fisher communities' expectations and balancing these with resource availability. In addition to balancing redress, expectations and ensuring sustainable utilisation of marine resources lies an even greater task of ensuring that social and cultural aspects associated with access to fisheries resources are acknowledged and respected. Failure to recognise and accommodate these issues in policy and management will result in people continuing to defend their rights and making claims for access to resources.

4.7 THE LAND REFORM PROGRAMME (LRP) AND PROCESSES: NEW PROMISES, GREAT EXPECTATIONS

Post 1994, robust and progressive new policies were developed and implemented. These, together with various programmes such as the LRP, sought to address past injustices and enhance equitable access to resources, especially for historically disadvantaged and marginalised groups. The LRP was one such policy initiative aimed at providing redress for the racially based land dispossessions that occurred during the country's apartheid era, and reducing the highly inequitable distribution of land ownership that resulted (Kleinbooi 2010; Kepe *et al.* 2000). As the programme had the objectives of

enhancing land-based livelihoods and restoring rights to land¹⁹, land reform in post-apartheid South Africa has proved to be extraordinarily complex and difficult, and is perceived by many to have been an expensive failure (Kleinbooi 2010; Cousins 2009; Lahiff 2008; Hall & Williams 2000). In the following sections, the major focus is on the land-reform process that has taken place in South Africa. The purpose of this overview is to contextualise the case study chapters that follow and demonstrate how land dispossession has affected and shaped access to natural resources in these areas.

4.7.1 The politics of land in South Africa

The land question in South Africa is a complex and sensitive issue (Kok & Gelderblom 1994): land represents the material and symbolic, a factor of production and a site of belonging and identity (Fay & James 2010; Shipton 1994). It is still widely acknowledged that the majority of South Africa's land is white-owned; this inequality arose from various discriminative policies such as the 1913 Native Land Act as well as the 1936 Natives Trust and Land Act (Mostert 2002). These laws designated land on a racial basis and prohibited black South Africans from acquiring, leasing or transacting land outside small native reserves which were later formalised as ethnic 'homelands', or the 'Bantustans' as they later became known (Ntsebeza & Hall 2007; Van Zyl *et al.* 1996). Some of these laws, however, were predicated with acts of dispossession under colonial rule and, throughout the 20th century, black communities were forcibly removed from their land, which saw independent farmers turned into tenants who in turn either became land labourers or were displaced. Furthermore, many communities lost land in the name of conservation when large regions were proclaimed 'protected areas', and residents were removed to make way for national and provincial parks (Hall 2010).

In response to these inequalities, the post-apartheid government embarked on a land-reform process to right some of the wrongs of the past. Land reform has been championed as one of the ways in which past racial exclusions and inequalities can be addressed in the 'new South Africa' (Hall & Williams 2000). At a political level, land reform has been seen as vital. Throughout the country's history, South Africans of nearly all ethnic groups have attached great emotional and political importance to land, which could also be observed in Afrikaner²⁰ notions of cultural and political identity. However, today the politics of land are most important to the African majority, as many were often violently forced off large tracts of land that they occupied, as a consequence of racial discrimination and policy interventions (Moyo 2007).

Therefore, addressing the land issue proved pertinent and, as acknowledged in the South African government's 'White Paper on South African Land Policy': "Forced removals in support of racial

¹⁹ South African Constitution, Section 25(4a) and Section 7.

²⁰ Refers to the descendants of the first Dutch settlers in South Africa.

segregation have caused enormous suffering and hardship in South Africa and no settlement of land issues can be reached without addressing such historical injustices” (DLA 1997).

4.7.2 The three tiers of South African’s LRP

4.7.2.1 Restitution

The South African government’s public policy on land reform was influenced by a strong emphasis on ‘righting the wrongs of the past’, notably by means of land restitution (Hall 2010; Walker *et al.* 2010). The former Department of Land Affairs²¹ was responsible for restoring land to those unjustly deprived of land rights since 1913, redistributing land to those who were denied equitable access to it under apartheid, and securing the tenure rights of those excluded historically from acquiring title to land (Hall & Williams 2000). The new Act established two main institutions to drive the land process: the Land Claims Court, which would be supported by the Commission on the Restitution of Land Rights (CRLR or the Land Claims Commission). This was supported by Provincial Land Claims Commissioners who were created to adjudicate claims for restitution (Hall & Williams 2000). The time-frame for restitution was outlined in the 1997 White Paper and comprised eighteen years in total starting from 1995 (Lahiff 2008). Three years were allowed for claimants to lodge their claims and the final deadline for lodging claims was 31 December 1998.

The parameters of restitution produced three dimensions or key issues that needed consideration, based on: (i) who is eligible?; (ii) what compensation they should get?; and (iii) who will pay? (Hall 2010). Table 3 highlights these considerations. The first consideration, eligibility, hinged on the provision of sufficient proof that property rights existed and were lost as a result of racially discriminatory laws. Some contestations arose around definitions of what constitutes community or racially discriminatory measures. Coupled to this was the even more contested cut-off dates of 1913 and the 1998 deadline for claims to be lodged (Hall 2010). The motivation provided for not accepting claims pre-dating 1913 was provided by the then Minister of Land Affairs, in that this would open the way for claims on land already occupied by blacks, rather than targeting white-owned land.

²¹ The former Department of Land Affairs and Agriculture (DLA) has been split into the Ministry of Rural Development and Land Reform (DRDLR) and the Ministry of Agriculture, Forestry and Fisheries.

Table 3. Dimensions of restitution in South Africa (adapted from Hall 2010)

| | |
|-----------------------------|---|
| Who is eligible? | Any person/community disposed of property after 1913 as a result of discriminatory laws or practices and not adequately compensated for; the direct descendants or deceased estates of such people. |
| What is to be restored? | Claimants are able to indicate their preference whether to have their land restored, obtain alternative land, to receive financial compensation or a combination of these. |
| Who should carry the costs? | Those who benefitted directly, those who own the land now or society as a whole? |

The second dimension of restitution involved arriving at what claimants ought to receive for being dispossessed of their land. Even though claimants could indicate their preference, emphasis was placed on getting people back to the land (CRLR 2008). The DLA's White Paper emphasised that "restitution must be driven by the just demands of claimants and solutions should not be forced on people" (DLA 1997). Despite these policy assertions, however, because of bureaucratic delays, many who originally indicated their preference to have land restored to them opted to accept financial compensation (Hall 2010). The final consideration in restitution centred on the question of who was to pay. In the South African context this was not straightforward, and identifying those who directly benefitted from dispossessions was not clear, as by the 1990's the owners of claimed land were often the indirect rather than the direct beneficiaries of dispossession (Hall 2010). It was therefore argued that making the current owners pay would be arbitrary and that society as a whole, through the state, would carry the costs, with the Minister of Land Affairs as the respondent (Hall 2010).

According to the DRDLR, recent years have seen an increase in the number of restitution cases settled and land being restored to claimants (Lahiff 2008). Various motivations for this are evident, but the main push is more than likely linked to targets set out at the implementation of land reform and its sub-programmes. Table 4 highlights the land transferred as well as the number of beneficiaries by province during the time period 1994 - 2009.

| Table 4. Land transferred through restitution (source: Greenberg 2009) | | | |
|---|---------------|------------------|----------------------|
| Province | Claims | Hectares | Beneficiaries |
| Eastern Cape | 16 201 | 94 834 | 215 201 |
| Free State | 2 662 | 47 615 | 40 893 |
| Gauteng | 13 159 | 9 476 | 70 179 |
| KwaZulu-Natal | 14 752 | 642 447 | 433 168 |
| Limpopo | 3 382 | 513 024 | 220 227 |
| Mpumalanga | 2 694 | 399 876 | 225 877 |
| Northern Cape | 3 682 | 539 620 | 100 554 |
| North West | 3 709 | 373 642 | 172 963 |
| Western Cape | 15 546 | 3 769 | 118 165 |
| Total | 75 787 | 2 624 303 | 1 597 227 |

The restitution programme has seen the settlement of many urban claims in a more or less straightforward manner, with financial compensation being the main redress. However, rural claims have taken considerably more time and resources (Hall & Williams 2000). Delays in the settlement of such claims may be attributed to: (i) the fact that many urban claims involved individuals and families, while rural claims involved many claimants and communities; (ii) divisions within claimant communities (i.e. older members wanting to return to the land versus younger people and women perhaps preferring to stay in places where they have lived for years); or (iii) complex land claims which involve high-value land, especially at or near coastal areas²² or conservation areas. One such restitution example which involves conservation aspects is the very well-known Makuleke in the Northern Province of South Africa. Here, more than twenty stakeholders were involved and a great deal of the land under claim involved land incorporated into the Kruger National Park (Ramutsindela 2002). Apart from the community, other stakeholders included the South African National Parks (SANParks), various government departments, as well as NGOs. This case served as an example that brought environmental conservation policies within the ambit of land reform, as well as additional fears of the country's conservation heritage being sacrificed in order to meet land reform objectives (Fabricius & de Wet 2009). The land from which the Makuleke were removed in 1969 was included in the national park and, under post-apartheid land reform legislation, the community was able to reclaim the land they had lost (Steenkamp & Uhr 2000). Despite having top political support for the Makuleke claim, the community found themselves in a drawn-out bargaining process with conservation authorities. After years of negotiation, the claim was settled in 1998 and noted by some as a model case of restitution, as it emerged with detailed planning and vision of community involvement and control over conservation and natural resources (Steenkamp & Uhr 2000). The

²² See Box 2 for summarised account of the Vaalplaas Community Land Claim.

outcome of the case was seen as embodying the official objectives of reconciliation, nation building and economic development (Robins & van der Waal 2010), with the decision by the Makuleke to maintain their land for conservation purposes²³.

Box 2. Vaalplaas Community Land Claim, Paternoster, West Coast, Western Cape, South Africa

Vaalplaas lies at the heart of what is known today as the picturesque historical fishing and tourist village of Paternoster on the Atlantic West Coast. Through a rich oral tradition of family history-telling, it is recorded by the Vaalplaas claimants that in the late 1800's their ancestors, 'Ou Oom' Awie Coraizin and his wife, Magdaleen Coraizin, came to the area now known as Vaalplaas from the 'Groot Paternoster area' further north along the coast. It is not clear what the formal relationship was between the original settlers and the title holder. The formal title deeds for this farm state that the land was owned by a Mr C J Walters who received a land grant under the Colonial Crown Land Disposal Act No. 11 of 1878.

By the early 1900's the fishing community of Vaalplaas was well established. The Vaalplaas community dwellings were adjacent to a long stretch of beach, protected at one end by the distinctive boulders that provided a measure of protection for the fishers when launching from the beach. Families harvested a wide variety of marine resources including smoke, harders, mussels, crayfish and St Josephs sharks both for their own consumption and for sale to other residents in the village and traders from elsewhere. They built small wooden boats, using both sail and rowing oars. They also used beach seine to catch harders. The community tells of age-old knowledge of the sea, of the ability to read the currents and the weather, to know when the fish are running as well as a deeply entrenched understanding of the importance of sustainable harvesting of resources.

The Group Areas Act of 1966 provided the means whereby the community could be systematically dispossessed of their rights to this land over the following forty years. The operation of a racist system of housing provision and local government planning further consolidated this dispossession. The Vaalplaas claimants estimate that the number of households living within the community at the time of the Proclamation of the Group Areas Act was approximately 34. Several of these households comprised more than merely a nuclear family, but included extended family and adult children. It is estimated therefore that there were approximately 147 people affected by the dispossession.

During the course of 1997 Ms Selma Brutus alleges that, after seeing an advertisement for the Land Restitution process in the paper, she contacted the Land Claims Commission. The community has drawn up its own list of community claimants, comprising 34 households, verified through its mandated representatives who have formed a Land Claim Committee. However, the continued marginalisation of rural communities following the introduction of a new land reform policy is visible through the community's partial understanding of the Land Restitution application process and their failure to follow up and confirm their application. Furthermore, their naïve trust in the officials' handling of their case, and then their difficulty in accessing adequate legal representation, presented challenges for their claim. On the 12 December 2002, the Chief Commissioner Wallace Mgoqi informed the Vaalplaas community in a letter that the lodgement of the claim would be condoned, but indicated that the Commission did not believe that the claim has merit within the framework of

²³ For a comprehensive review and further reading on the Makuleke restitution case see: Robins & van der Waal 2010; Fay 2007; Ramutsindela 2002; Steenkamp & Uhr 2000; De Villiers 1999.

the restitution legislation.

The fact that the statutory Integrated Development Planning process at local government level failed to respond to the crisis at Vaalplaas, and has subsequently not even begun to explore how this very divided town could begin to address its apartheid history, is further evidence of the fact that the Vaalplaas residents have suffered a series of injustices at many levels – they have been failed by government at national, provincial and local level. Not only have their rights in land not been addressed, but their rights to their traditional livelihoods as fisher people have systematically been eroded further through the imposition of a fishing rights policy that limits access to the sea for small-scale, artisanal fishers.

The Vaalplaas land claimants tell a story of a series of injustices – the systematic dispossession of their beneficial rights on the land settled by their ancestors; alienation from their use rights to harvest marine resources along the coast; a harsh, exploitative employment relationship of being forced to vacate their homes through a combination of subtle pressure as well as the violence of a forced eviction by police; their lack of access to adequate legal representation; and then their neglect by a bureaucracy that failed to meet their need for information, failed to respond timeously to them and subsequently informed them that their claim had no merit. Vaalplaas histories reflect the stark reality of a system of racial, class and gendered oppression along the western coast of this country. The experiences of this small community mirror the larger experiences of many indigenous coastal dwellers in this country who have gradually been alienated from their direct access to the sea and land.

(Adapted from: Sunde J. Report on Vaalplaas Community Claim, Paternoster, West Coast. Cape Town: Masifundise Development Trust, 2003)

Apart from rural claims involving conservation sites many additional reasons have been cited for the slow delivery of finalising land claims. In 2007 the former Minister of Land Affairs reiterated the reasons for delays in settling claims and identified the following factors:

- A high land cost based on market values in terms of the constitution;
- Unsurveyed and unregistered land rights (no title deed on the land). This requires detailed mapping and ‘*in loco* inspections’ on the land with communities to identify historical sites, graves, boundaries, etc.;
- Protracted negotiations with landowners and claimants, and disputes taken before the Land Claims Court;
- Community disputes, traditional authorities’ jurisdictional issues and disagreements;
- Incoherent land-use practices and need for the alignment of priorities (i.e. communal and commercial land-use practices) (CRLR 2008:3).

In addressing these complex claims and the various deadlines, some interest has been shown in the prospect of land appropriation (Lahiff 2008). Despite this option, however, albeit interest shown,

there is only one case, Pniel in the Northern Cape, where this has occurred (see Box 3)²⁴. Attention to other high-profile restitution cases, including the Khomani-San land claim in the Northern Cape and Elandskloof in the Western Cape, has been around the lack of post-settlement support for these communities after the hand-over ceremonies were completed. Such cases display the growing awareness that beneficiaries across the spectrum of land reform are receiving little in the way of training, finance, advice or support, and awareness of the difficulties experienced by many claimants in initiating productive enterprises (Lahiff 2007; Bradstock 2005; Wegerif 2004).

Despite these challenges, optimism from government resides to settle all outstanding claims and, while progress has been made, considerable challenges remain for those who have regained their land and the state bodies responsible for providing them with support (Kleinbooi 2010).

Box 3. Pniel Expropriation

Pniel is a commercial farm unit measuring 25 000 hectares. It is located in the Northern Cape province. The farm, which was owned by the Evangelical Lutheran Church in South Africa, is now vested in the State. The claimants are former residents of Pniel and direct descendants of the person(s) who were forcefully removed. The claimants are claiming both financial compensation and restoration of unregistered rights in land held by their ascendants prior to their dispossession in order to engage in agricultural activities, including various farming activities like cattle farming, which is in line with the current land use on the farm.

The Pniel Farm 281 in the Northern Cape province has become the first property to be expropriated by the state in line with Section 42(e) of the Restitution of Land Rights Act, no. 22 of 1994, as amended. During the Restitution process, claimants of Pniel, together with the Regional Land Claims Commission, established a Communal Property Association for the purpose of the administration of the land and representation of the claimants. Due to the incapacity and failure to comply with constitution obligations of legal entities, Pniel communal property association's administration was placed under the Department of Land Affairs, ordered by the Kimberly High Court. This was further approved by the Director General of the Department of Land Affairs, who eventually delegated the Regional Land Claims Commissioner for the Northern Cape and Free State to appoint South African Farm Management (SAFM) for caretakership. The mandate of the SAFM was to look after the land against vandalism and degradation, as well as the daily management of the farm.

Currently, there are two groups of people staying on the land. The one group is made up of people who were working on the farm for the church and are now retired. The other group consists of people who were previously allowed to stay on the property as part of the Mission's outreach programme. The tenure security of these people will be respected.

(Media statement issued on 1 November 2007 by the Commission on Restitution of Land Rights)

²⁴ See Box 3 for media statement issued by the Commission of Restitution of Land Rights, 1 November 2007.

4.7.2.2 Redistribution

The second component of the land-reform programme in South Africa is redistribution; here, the aim is to redistribute white-owned agricultural land to blacks. The constitution requires the state to act within “reasonable legislative and other measures” within its available resources, to foster conditions that enable citizens to gain access to land on an equitable basis²⁵. In the government’s 1994 RDP it was stated that the aim of the LRP should be to redistribute 30% of agricultural land in South Africa within the first five years²⁶. By May 2001, however, this commitment was reaffirmed and the target date was shifted to 2014 and then again to 2025 (Kleinbooï 2010). The actual performance of the redistribution and tenure programme between 1994 and 2009 is provided in Table 5.

| Province | Hectares | Beneficiaries |
|-----------------|------------------|----------------------|
| Eastern Cape | 353 357 | 25 633 |
| Free State | 350 291 | 7721 |
| Gauteng | 34 513 | 7328 |
| KwaZulu-Natal | 547 414 | 67 761 |
| Limpopo | 91 235 | 7403 |
| Mpumalanga | 322 839 | 13950 |
| Northern Cape | 952 744 | 2773 |
| North West | 268 566 | 40 539 |
| Western Cape | 122 304 | 12 750 |
| Total | 3 043 264 | 185 858 |

Between 1994 and 1999, land redistribution operated on the basis of an ‘applicant-driven’ model known as the Settlement/Land Acquisition Grant (SLAG)²⁷. The amount for this grant went up to R16 000 per eligible household, but this model was shortly succeeded in 2001 by a new sub-programme when the Minister of land affairs stated: “A review of the current application based system of SLAG has revealed a number of limitations in delivery and serious limitations in terms of agricultural development, rural development and poverty eradication”²⁸. A sub-programme adopted in 2001, aimed at shifting the emphasis of redistribution towards sustainable agriculture rather than settlement, was entitled Land Redistribution for Agricultural Development (LRAD). This programme saw the use of a combination of state grants and commercial loan finance to settle aspirant farmers on agricultural land (CDE 2005). These grants were paid to individual applicants and, together with

²⁵ Section 25(5), Constitution of the Republic of South Africa.

²⁶ African National Congress (ANC). The Reconstruction and Development Programme: A Policy Framework, Johannesburg, 2000.

²⁷ CDE 2005.

²⁸ Didiza T, Parliamentary media briefing, February 2000.

small loans from the Land Bank, were aimed at assisting beneficiaries to finance their farming operations (Lahiff 2005). When LRAD was introduced, it drew criticism, mainly in view of it being an elitist programme that would be inaccessible to the poor. This was, however, disputed by the Land Affairs Department: “LRAD was in fact accessible to a wide range of beneficiaries, including very poor people who intended to use the land for subsistence rather than commercial farming” (CDE 2005).

In 2007 the DLA reiterated its commitment to redistribution and the aims of its combined Land Redistribution and Tenure Reform Programme are as follows:

- Redistribution of 30% of white-owned agricultural land by 2014 for sustainable agricultural development;
- Provision of long-term tenure security for farm dwellers and other vulnerable groups;
- Contribution to poverty reduction;
- Contribution to economic growth;
- Promotion of social cohesion and economic inclusion (Lahiff 2008).

4.7.2.3 Tenure reform

The third leg of the LRP is tenure reform (Lahiff 2008). Set out in 1994 in the RDP, the aim of tenure reform was to “ensure security of tenure for all South Africans, regardless of the system of land holding” (Government of the Republic of South Africa 1994b). Tenure reform is also seen as an obligation under the Constitution of South Africa that states: “A person or community whose tenure is legally insecure as a result of past racially discriminatory law or practices is entitled to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress”²⁹. In order to implement or drive tenure reform, two laws were passed: the Extension of Security Tenure Act (ESTA) of 1997 and the Land Reform (Labour Tenants) Act (LTA) of 1996. ESTA protects dwellers (i.e. non owners) on privately owned land, whether rural or peri-urban, against arbitrary eviction, and allows farm dwellers to “upgrade their rights in land” by securing ownership of land via SLAG grants (CDE 2005). The LTA grants secure tenure to labour tenants on privately owned farms.

However, these two laws have also seen many challenges in their implementation. This has been demonstrated in continued evictions of farm dwellers outside of the legal frameworks. A former minister of DLA stated in 2000: “Although there are no accurate statistics available, the DLA believes

²⁹ Constitution of the Republic of South Africa, Section 25(6).

that there is an increase in illegal evictions and a decrease in legal evictions”³⁰. Hall (2007) adds that little is known about how many farm dwellers have been evicted either via the legal or illegal route; in provinces such as KwaZulu-Natal, there is evidence to support that illegal evictions are outnumbered by legal evictions, but in some provinces such as the Western Cape, evictions more commonly occur through the legal route. It is therefore suggested to be apparent that the developmental aspect of ESTA has largely failed to materialise; instead, it has become a mechanism to regulate evictions rather than to reform tenure rights. In a national survey undertaken by Nkuzi Development Association in 2005, it was found that just under one million people were evicted from farms in the period between 1994 and 2003, and that less than 1% of these cases involved any legal proceedings (Wegerif 2004).

To reiterate, the LRP has been dubbed by some as an expensive failure, and various challenges still exist. However, there have been gains in that experience with implementation and innovation has been acquired. However, various contradictions remain in the existing legislature and, even where formal ownership to land is restored, it does not necessarily give claimants unrestricted rights of access to their land or access rights to other natural resources from which they may historically benefitted (Walker *et al.* 2010). This has been evident in land claim cases that involve high-value agricultural areas or conservation sites. The two case study sites described here are examples of the complexities of land reform and the associated issues that involve access to natural resources. Both case study communities share a history of dispossession and both have been engaged in a land-reform process. However, as a result of the complex nature of these claims, as well as unresolved aspects related to natural resource access, there have been delays in finalising these land claims.

4.8 SUMMARY

The aim of this chapter was to describe the environmental context in South Africa and highlight key policy reforms that have taken place. This was achieved by describing the fisheries and land sectors in South Africa. The chapter commenced with a description of South Africa’s environmental history and its protectionist approach in environmental policy and practice. Discussion followed on various post-apartheid development initiatives and objectives pertaining to the environment and natural resources, and how these objectives impact on, and include, civil society.

Having achieved success in ensuring a peaceful transition to democracy, there is compelling evidence that, despite these successes, other developmental challenges are intensifying. This is evident in the continuous rise in unemployment rates and the fact that over half of the population lives in poverty

³⁰ Sibanda S. Land Reform and Poverty Alleviation in South Africa. Paper presented at the SARPN conference on land reform and poverty alleviation in Southern Africa. Human Sciences Research Council, Pretoria, 4 - 5 June 2000.

(Aliber 2003). The response of South Africa's government to these challenges has included measures such as radical policy shifts, encouraging and promoting the use of and access to natural resources, and emphasising rights and participation in policy development and implementation. The various policy reforms and programmes detailed in this chapter are aimed to address these challenges; however, while the issues of redress are particularly contained in policy, it has proven challenging in practice to fully 'right the wrongs' of the past.

University of Cape Town

CHAPTER FIVE

THE EBENHAESER AND COVIE CASE STUDY AREAS

5.1 INTRODUCTION

In the previous four chapters, the study was introduced, key concepts were defined and theoretical ideas underpinning the research were highlighted. In the theoretical chapter (*Chapter Two*) the major discourses of access were presented, with focus on entitlements, rights and abilities, as well as how these translate to those engaged in processes of access to resources. This chapter now moves on to describe the case study sites, Ebenhaeser and Covie. Both case study chapters commence with an historical description of the areas, with particular emphasis on their early history. Key events such as land dispossession are highlighted, as these have affected and shaped community livelihoods and, ultimately, access to natural resources in these areas. It has been especially necessary to feature the early history of the case study sites, as contemporary access discourses are influenced by these historical events. Furthermore, by providing this overview it sets the stage for understanding the current context in relation to major reform processes occurring at the sites. The chapter continues with an overview of current-day Ebenhaeser and, in conclusion, the policy framework applicable to resources here is discussed.

The case study sites are located in the Western Cape province of South Africa: Ebenhaeser is located on the West Coast and Covie in the Southern Cape. The outline of the individual case study sections follows a timeline order that describe major events that occurred and greatly influenced issues of rights (property and human rights), community life and access to land and natural resources. In the context of South Africa, it is crucial to highlight events and processes that occurred during the colonial and later apartheid eras, as these events vastly impacted on the abilities of people (especially black people) to utilise and benefit from natural resources. The chapter aims to highlight the complex social relations and processes associated with resource access and how the myriad of changes (especially from a colonial and later discriminative political context under apartheid) further shaped access to natural resources at these sites. During the fieldwork phase of this study, the researcher interviewed many participants who shared their life stories and experiences (including knowledge passed on from the previous generation). These oral histories provided an understanding of definitions, perceptions and values that local people attach to accessing natural resources. It is therefore evident that their voices would be at the core of understanding the processes and mechanisms for gaining and claiming access to natural resources. More detailed representations of these oral histories follow in the results chapters (*Chapters Six and Seven*). However, this chapter

begins to present some of the voices, with the purpose of demonstrating how local people's lives and experiences are inextricably linked with natural resource use and dependency.

5.2 HISTORICAL OVERVIEW OF EBENHAESER

Ebenhaeser, a typical rural area located in the Olifants River valley, is on the West Coast of South Africa, approximately 400 km from Cape Town (Figures 7 and 8).

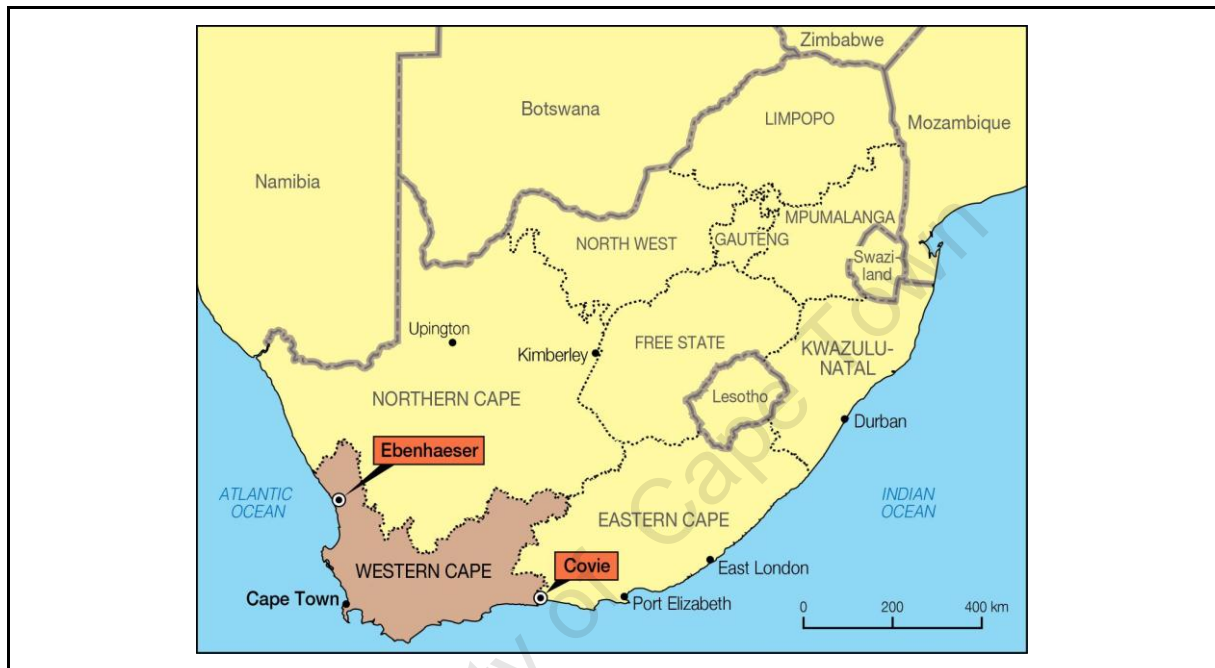


Figure 7. Map of South Africa depicting the case study sites, Ebenhaeser and Covie, in the Western Cape Province.

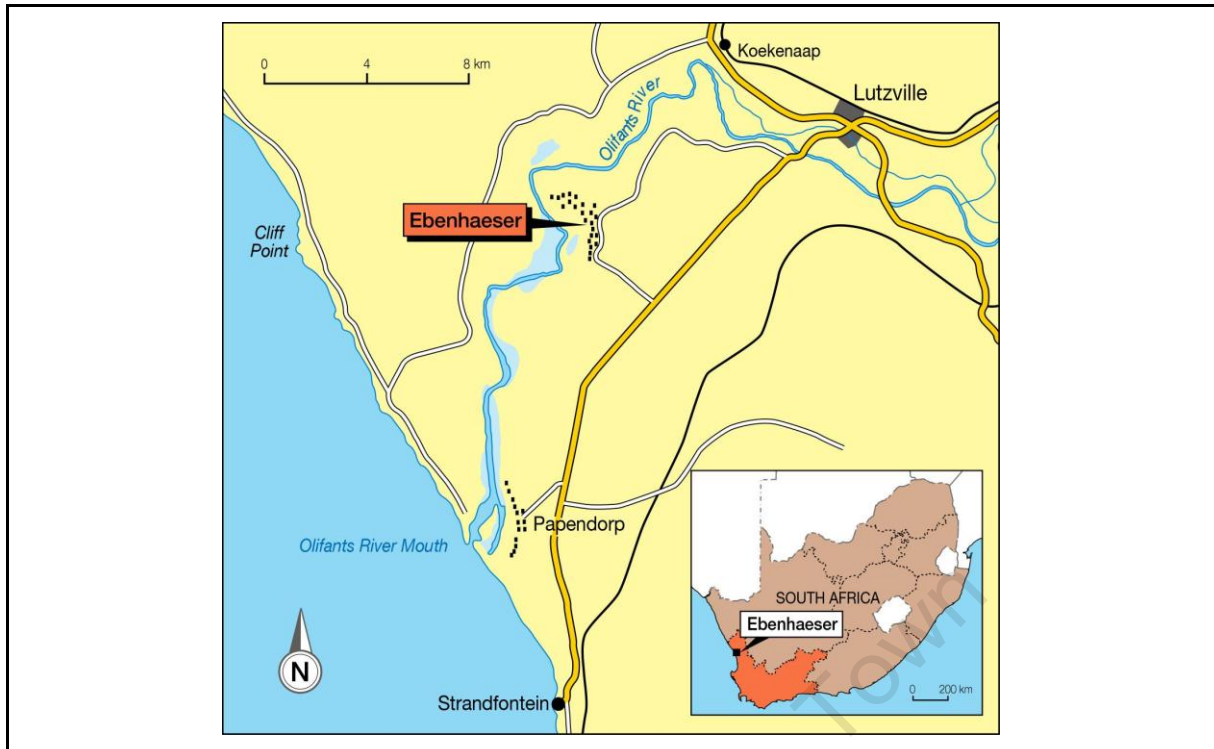


Figure 8. Map showing the location of the Ebenhaeser case study area.

The area consists of several smaller settlements including Hopland, Olifantsdrift, Rooi-erwe and Nuwepos. Areas surrounding Ebenhaeser include the settlement of Papendorp, which is located at the mouth of the Olifants River and is seen as an extended part of Ebenhaeser. The areas of Strandfontein (a holiday town historically designated for whites only) and Lutzville (a wine and agricultural producing valley) are in close proximity. The latter played a key role in the development of present-day Ebenhaeser.

5.2.1 ‘Ebenezer’: Its early years and the establishment of a missionary station

The history of Ebenhaeser’s early years and its establishment are similar to the histories of many other South African communities. While the country was inhabited by various indigenous groups before the arrival of Europeans, Parkington (1977) adds that the Olifants River valley was the home of pre-colonial peoples, indicated by extensive archaeological evidence. It is believed that the Soaqua, who were indigenous hunter-fisher-gatherers, dwelled in the Olifants River valley and used to migrate seasonally between the coast from St Helena to the Olifants River. It is also believed that the Soaqua depended on the protein from rich marine resources in the estuary and that this probably sustained them during the winter months (Parkington 1977). Documented accounts of entries in diaries from early travellers to the area note that a group of Soaqua had given one of the settlers in Jan Danckaert’s party (Danckaert led the first group of European explorers into this valley during 1660) “dried fish, apparently, but not certainly near the approach to the Olifants River” (Thom 1952, in Parkington

1977). Reference to the expedition of Jan Danckaert is particularly interesting as it marks the initiation of contact with indigenous people of the Olifants River valley, which could be viewed as the beginning of change that would follow with further European expansion in this area (Parkington 1977).

The community who now reside in Ebenhaeser along the banks of the Olifants River constitute descendants of the indigenous communities who permanently settled in the area in the 17th century, and there is evidence that a considerable number of the original residents, both descendants of the Khoi-San³¹ Captain Andries Louis, and others settled here in the 1700's or 1800's (Cronje 1979). During the 1800's many foreign missionary parties, including the Rhenish Missionary Society (RMS), came to South Africa to establish missionary stations. According to oral history, Captain Andries Louis was already living in this area and requested that the RMS build a church and a school at Doornkraal farm (Figure 10) in 1832 (Cronje 1979). By 1837 the missionary station was officially established.

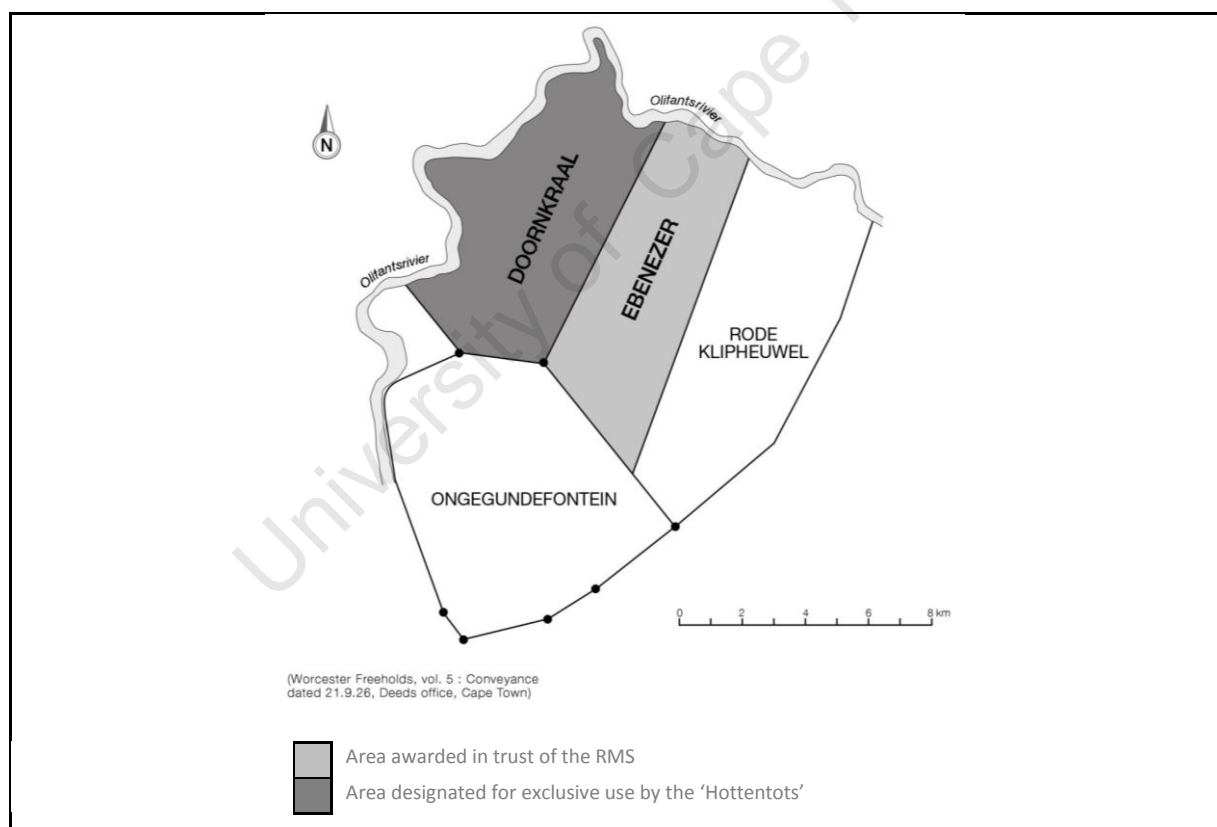


Figure 9. Land utilised by the Rhenish Missionary Society (RMS).

The earlier years at the missionary station were recorded as being hampered with floods and difficulties. The people at Doornkraal did not have ownership rights, only rights to live on the farm.

³¹ 'Khoi-San' is a unifying name for two historical ethnic groups of Southern Africa: the foraging San and the pastoral Khoi.

However, during 1837 an additional piece of land was granted in a Crown grant letter to the RMS under the following conditions:

- “That the portion hereby granted, together with the building erected or to be erected hereafter to be erected thereon by the Society shall be exclusively used for the purposes of the said society’s institution called Ebenezer and when no longer so used shall revert to the Colonial Government to be disposed of in a manner herein after mentioned;
- That the remainder of the lands, as shown in the diagram shall be appropriated to the use of the Hottentots only, those now residing thereon or belonging to the party of which Captain Louis is the present acknowledged head being entitled to a preference in all grants of erven to be hereafter made in favour of individuals of that class;
- That the grazing of the whole of these lands both missionary and Hottentot portions shall be in common between those parties to the exclusion of others;
- That the Society shall have the right to construct such aqueducts or make such water courses in any part of the Hottentot portion of lands as the Resident missionary for the time being shall deem proper for the good of the settlement;
- That in the case of the Society’s portion reverting to the Colonial government the same together with all the buildings erected thereon shall be held by the said Government for the sole use and benefit of the said Hottentots and shall be disposable only under the conditions set forth in article 2.”

(Crown Grant 6 July 1837.)

After the issuing of the Crown Grant, the RMS was the lawful owner of Ebenezer and the approved administration of the whole area. The idea of the RMS with the Ebenezer Mission station was that it should be self-sufficient and that the people living there should be involved in fishing or farming or any means by which they could become self-supporting (VGK 1996). Keeping livestock and farming were promoted as primary activities in the area. However, there were small numbers of people fishing (VGK 1996).

In 1889 the RMS approached the Dutch Reformed Church to take over the mission station; by the end of 1889 the area was taken over by the ‘Binnelandse Zending Sub-Commissie van de Nederduitse Gereformeerde Kerk in Zuid-Afrika’ [hereafter BSSK] (Cronje 1979). During this time, white people were regarded as superior by the missionary parties, and the local populations (including indigenous groups such as the San, Nguni, Khoi-khoi and slaves) were treated as less than human and were

described in negative terms (VGK 1996). Mounting concerns over the use and occupation of the land by indigenous groups and increasing demands by white inhabitants for land would lead to the detriment of the local Ebenezer inhabitants, in the form of land dispossession. Scholtz (1964) notes that Ebenezer's dispossession was triggered by the realisation that the indigenous inhabitants were occupying more than 39 000 morgen³² of land. This was confirmed in a Civil Commissioner's report (1876)³³:

"From the inquiries instituted by me in this matter I am of the opinion that there is no necessity for such a large tract of country being reserved for the use of the inhabitants of this Mission Station and would recommend that the ground be divided by a line being drawn between the parts and that about 7 000 or 8 000 morgen of ground be left for the use of the inhabitants of the Ebenezer Station as winter grazing ground".

5.2.2 'Exchange' of land: From Ebenezer to Ebenhaeser

The early 1900's saw the national government's plan for racial segregation intensifying, as efforts to reduce white poverty, more notably through the allocation of land to poor whites for agriculture, took precedence. On the issue of 'white poverty' and segregation, Cronje (1979) adds that the appointed Minister of Land Affairs at the time suggested the following: "*Afskeiding, apart hou, sort bij sort. Hou hulle weg van die kleurlinge*" (Separation, keep apart, away from each other. Keep them away from coloureds). Therefore, to make provision for poor whites, the government suggested that an irrigation scheme be developed at Ebenezer (Figure 10), that would form part of the greater Olifants River scheme (Pienaar 1996). The descendants of the original inhabitants, who were classified as coloured³⁴, would be moved from Ebenezer and Doornkraal or the 'Old Ebenezer', today known as Lutzville, to where they are currently settled (Figure 9).

Before the 'move', however, a government committee was appointed to ascertain which persons would have to be negotiated with and what rights and claims would have to be bought from local people or compensated for in order to acquire the farms for inclusion in the Olifants River irrigation scheme (VGK 1996). With the establishment of this committee, recommendations to enhance access to fishing grounds in the river for the local community were supported. In the same Commissioners report of 1876, it was further recommended relocated local inhabitants would be able to lease an

³² Morgen was a unit of measurement used in the Dutch colonies which included South Africa (1 Morgen equal 0.85 hectares) Available at: [http://www.convertunits.com/from/morgen+\[South+Africa\]/to/hectare](http://www.convertunits.com/from/morgen+[South+Africa]/to/hectare)

³³ Report of Acting Civil Commissioner, Clanwilliam; Report SG and accompanying note of the Department of Lands. Cape Archives, Records Group Lands Department, Vol LND 1/3.

³⁴ In South Africa, the term coloured is used to refer to an heterogeneous ethnic group whose ancestry can be traced back to the period of colonialism and slavery, from Europe, various Khoisan and Bantu tribes of Southern Africa, Indonesia, India, Mauritius and Saint Helena, among others.

“area bordering the Olifants River for 21 years, subject to the undisturbed right of fishing on the banks of the River and an outspan, leaving the trekpath through it to Banje Vlei from Ebenezer”³⁵. While the inhabitants of Doornkraal and Ebenezer relied on a range of activities for their livelihoods including agriculture, livestock and fishing, the latter would see an increase in dependence as people were uprooted from their fertile land to less fertile land. While people in the fishing locations were already actively involved in fishing, those who would be moved would be accommodated better in terms of fishing activities. In 1920 a Commission was told by the Justice of the Peace at Strandfontein, that the residents’ “chief means of support is fishing and if they are moved down the lower end of Oliphantsdrift, their facilities with regard to fishing will be increased instead of decreased” (Cronje 1979).

The ‘exchange’ of land took place under the Ebenezer (Van Rhynsdorp) Exchange of Land Act No. 14 of 1925, the aim of which was to provide for the exchange of certain land in the division of Van Rhynsdorp. After the exchange, the coloured inhabitants of Ebenezer and Doornkraal lost 3 699 morgen and received 12 895 morgen land which had little agricultural potential and was already three times less valuable than the ‘exchanged land’ (Pienaar 1996). In 1926 some inhabitants of Ebenezer refused to move from the land. These protests were in vain, however, and by 1927 there were already 43 white farmers settled on the ‘Old Ebenezer’ land (Cronje 1979; VGK 1996).

In contrast to conditions at the ‘Old Ebenezer’, site inhabitants on the new land were subjected to difficult circumstances. The 300 morgen of land that was part of the ‘exchange’ was divided between 150 registered inhabitants of Old Ebenezer and the inhabitants were required to make a living on 2 morgen of land each (VGK 1996). It was because of difficult circumstances at the ‘new’ Ebenhaeser that a resurgence of frustration surfaced; by October 1933, inhabitants refused to pay tax for their land (VGK 1996). The community’s frustration did not settle and, in 1936, a small group of people travelled approximately 400 km to seek legal advice on the matter. According to Goedeman (in VGK 1996) the inhabitants felt that they were treated unfairly and had been discriminated against, and that the Dutch Reformed Church was involved in the dispossession of their land. Furthermore, they felt that the former inhabitants of Old Ebenezer were forced to abide by already established arrangements and that they had no negotiation power in the ‘exchange’ agreement. Those who sought legal opinion were, however, informed that prospects for legal litigation at that stage were not feasible (VGK 1996).

Conditions at the new Ebenhaeser did not improve. In 1947 in an inter-departmental committee report on “Matters affecting Coloured persons on Coloured Mission Stations, Reserves and Settlements” it was noted (Pienaar 1996):

³⁵ Report of Acting Civil Commissioner, Clanwilliam; Report SG and accompanying note of the Department of Lands. Cape Archives, Records Group Lands Department, Vol. LND 1/3.

- “A distressing feature about Ebenhaeser is that the irrigated land has become brackish, that each of the more than 50 registered occupiers has no more than half a morgen of good soil left, the rest being brackish. The trouble at Ebenhaeser is that the lands are practically on a level with the river, with the result that there is very little prospect of improving the position of use by sluits³⁶. The situation grows worse every year”.
- “In terms of the exchange, the Coloureds received 300 morgen of irrigated land, exempt from water rates. In addition, 500 morgen situated below the canal were given to them and they were promised that if water was available they could use it to irrigate this land at a fixed maximum price. However at its extremities, the canal is so small that there is not the slightest chance of their having more water at their disposal.”

Given the difficulties experienced, alternative ways of sustaining their livelihoods were considered by many inhabitants of Ebenhaeser. Many were already involved in fishing, but with the land situation being dire, more people engaged in fishing to contribute to their households (VGK 1996; Cronje 1979). Many older residents interviewed noted that when they were growing up, there was only fishing with little other activity occurring; therefore, they could only recall how their parents and even they as young children were involved in fishing. Sara Afrika, better known as ‘Aunty Saartjie’, from Olifantsdrift, Ebenhaeser recalls:

*“My pa het baie goeie ondervinding van visserye gehad, hy het ook eintlik boedery ondervinding gehad, maar het later meer met vis gewerk, hy was ‘n visserman meer. Hy’t ‘n stukkie landbou grond gehad, maar het nie baie op die grond gewerk nie, die meeste het maar ‘n lewe uit die rivier gemaak.”*³⁷ (My father had good experience of fishing, but also had experience in farming, but later worked more in fishing, he was more of a fisherman. He had a small piece of agricultural land, but did not work on it much, most made a living from the river.)

5.2.3 Description of the Ebenhaeser land claim

After democratisation in South Africa, the Ebenhaeser community lodged a claim as a result of being dispossessed of their rights to land after 1913. In 1996 the claim was officially submitted by the ‘Ebenhaeser Grondeise Komitee’ (Ebenhaeser Land Claim Committee) on behalf of the community of Ebenhaeser. In terms of the provisions of the Restitution of Land Rights Act No. 22 of 1994, the community claimed restitution of the land lost under the 1925 Exchange Act, and an investigation was initiated into historical claims to rights in land including “the fishing rights of the community and

³⁶ A ditch for irrigation or drainage

³⁷ Interview with Aunty Saartjie Afrika (resident of Olifantsdrift, Ebenhaeser) at Ebenhaeser in 23 January 2009.

access and use of the river and the river mouth”. The validity of the claim was recognised by the Land Claims Commission and the Minister signed a framework agreement in terms of which the purchase and development of the claimed land and investigations into these historical claims would proceed. The claimants were described as descendants of the families who lived in the area and were dispossessed of their rights, as well as new and additional members who later settled on the land and had been accepted as part of the community (Pienaar 1996).

In summary, the major issues highlighted in the claim were:

- The claimant community was dispossessed of their land through means of the 1925 Exchange Act in collaboration with Act No. 29 of 1909 that were racially motivated and implemented to accelerate discrimination within society;
- The land that was received as part of the exchange was three or four times less in value than the dispossessed land;
- The Dutch Reformed church failed in its duties as caretaker of the Ebenezer land and it was actively involved in racially discriminatory actions and dispossession of the local inhabitants’ land;
- According to paragraph 5 of the Crown letter, the Ebenezer area should have been handed over to the state when the RMS concluded its activities and the state was required to only allow the descendants of Captain Louis on the land; therefore, the Dutch Reformed church had no right to take ownership of the land in 1890, and both the church and the state had no right to initiate dispossession at Ebenezer or Doornkraal;
- During the ‘exchange’ in 1925, the state undertook to support the community with the development of 500 morgen of land, but this never materialised;
- The main aim of Act No. 25 was to establish local people as far away from fertile land, irrigation water and the white inhabitants in efforts to advance apartheid legislation

(Translated and adapted from Pienaar 1996.)

The finalisation of the Ebenhaeser land claim is anticipated in 2013. Various development plans and proposals have been initiated and a community property association (CPA) has been established to formalise the transfer of the land. To date, no pitfalls are foreseen that will hamper finalisation of the settlement, and community members are positive that settlement will occur without difficulty.

5.3 EBENHAESER: THE CASE STUDY AREA

5.3.1 Community characteristics

As highlighted above, Ebenhaeser consists of several settlements including Olifantsdrift, Rooi-erwe, Hopland, Nuwepos and Papendorp. The latter, which is located 15 km away from the main settlements of Ebenhaeser, is considered to be an extended settlement of the area. In the last national census undertaken in 2001, the population for the greater Ebenhaeser area stood at 1 723 (Matzikama IDP 2007). In all settlements, housing consists predominantly of what is known as Reconstruction and Development Program (RDP)³⁸ housing (Figure 10). Some members of the community would erect extensions to these houses for more space, but there are very few houses that have large rooms, meaning that some households are extremely crowded. All households have access to a pre-paid electricity meter and piped water inside the house, but limited sanitation facilities. Access to these settlements is via dusty gravel roads and the tarred road that leads from the main highway into Ebenhaeser is relatively new (laid in 2007). There are no schools available at the settlement areas and the only primary school is located in Ebenhaeser; children from Papendorp are transported to this school or to neighbouring towns by bus. Children attend high school in Vredendal (20 km away), Lutzville (15 km away) or elsewhere. No shopping facilities are available locally, but two small vendors sell basic household and food stuffs. A postal service and small library are available in the main Ebenhaeser town area and there is no doctor or clinic, but a mobile clinic services the area once a week. For other services such as banking facilities or pharmacies, residents either travel to Lutzville or the town of Vredendal.

³⁸ In the initial and earlier years of implementation of the RDP in South Africa, the building of these houses was the topic of discussion with most critics highlighting the fact that government's intention was on quantity rather than quality in terms of providing low-cost housing (see Harsch 2001 and Gilbert 2004 for further discussion on RDP housing in South Africa). Prepaid electricity meter devices are installed inside houses and residents are required to purchase credit from vendors and upload this onto the meter in order to have electricity. During interviewing it was found that even though many households had these units, many were unable to buy and load credit and therefore still made use of alternative sources of energy, which include gas or wood for fire and candles and lamps for lighting. However, once a month, residents were allocated 50 units or credit free of charge from the national electricity supplier as these households fall within the indigent criteria profile for people who qualify for free basic electricity. Many households were dependent on this free allocation and, once used, reverted back to alternative sources of electricity. The researcher also noted that partial sanitation was found inside the houses, as a toilet was fitted, but where wash facilities should have been located, only a tap was available inside the 'bathroom' with no bath or shower facilities.



Figure 10. RDP houses at Papendorp overlooking the Olifants River mouth (house on the left has additional extension) (Picture: Samantha Williams, July 2009).

5.3.2 Fisher livelihoods

The following section describes contemporary characteristics of fisher households in Ebenhaeser.

From the sample population targeted by the household questionnaire, the majority of respondents were males ($n=50$) with only 18 female respondents (Table 6). This imbalance was due to fact that when the researcher arrived to conduct the interviews, the household member that greeted the researcher automatically assumed that she wanted to speak to the person involved in fishing activities (which was desirable). However, the survey also sought information on household composition, access to facilities, type and source of income, how many people in the household were involved in fishing activities, as well as engagement in other livelihood activities. Therefore, the questionnaire could be completed by any adult member of the household. While it was not the intention to exclude women or other members of the household from the survey, it was often beneficial when the respondent was a fisher, as this also led to discussions on topics not covered by the questionnaire. The nature of fishing activities, including difficulties experienced by the fishers as well as perceptions about management-related activities, were often an alternative topic of discussion. This enabled the researcher to assess the nature and range of activities engaged in as well as how fishers felt about factors impacting on their activities.

| Table 6. Gender and age range of respondents | | | | | | | |
|--|---------------------------|---------|---------|---------|---------|-----|-----------------|
| Gender | Age of respondent (years) | | | | | | Total, <i>N</i> |
| | 18 - 27 | 28 - 37 | 38 - 47 | 48 - 57 | 58 - 67 | ≥68 | |
| Female | 0 | 5 | 2 | 5 | 5 | 1 | 18 |
| Male | 1 | 8 | 11 | 17 | 10 | 3 | 50 |
| Total | 1 | 13 | 13 | 22 | 15 | 4 | 68 |

Households could be characterised as patriarchal, with the majority of household heads being male and fishers (Table 6). The harvesting of ‘harders’ is a main source of income and food security for the fishing communities of Ebenhaeser. During the fieldwork phase of the research, the role and importance of fishing was a theme that was explored during several individual interviews, captured through the household survey and the focus group sessions. Additional responses about the role and contribution of fishing were documented from focus group sessions and informal conversations. From the household survey 54% of the respondents (*N*=37) indicated that the most important income-generating activity was fishing (Figure 11). When prompted to expand on this, many respondents added that this was their only income and that it was consequently critical to household income and food security. Government grants, including old-age, disability and child maintenance grants, were listed by 29% as the most important source of income. These respondents felt that this was a ‘stable’ form of income, as they knew they were guaranteed a monthly payment. From the survey, 12% listed income from employment as the household’s most important source of income, with seasonal (3%) and contract/part-time work indicated by 2% of respondents. At the time of conducting most of the interviews (December, January and February) seasonal work activities, which included tomato picking at farms in the area, were underway and some of the respondents who listed this as most important added that their seasonal activities depended on how much work they could do in a day, with some pairing up with others to work faster. A respondent added that she would even try to save some of this money, and other money she received for acting as a foster parent to a child³⁹, to be used and lived off when the season concluded. Other responses about the role of fishing saw some common reasons associated with the instant benefits that fishing had to offer. Fishers expressed that if they needed to provide food or cash, then turning to fishing would be able to satisfy those needs⁴⁰.

³⁹ Interview conducted with Jeanetta Blakenberg at Olifantsdrift, Ebenhaeser on 3 December 2010.

⁴⁰ Common responses from fishers including: Jan ‘Oubaas’ Coetzee (2 February 2009 at Olifantsdrift); Aggels Blakenberg (21 October 2009 at Olifantsdrift); Heinrich Afrika (23 January 2010 at Olifantsdrift); and Isak Cloete (5 April 2010 at Papendorp).

| Table 7. Livelihood activities of household head | |
|--|--------------|
| Position | <i>n</i> (%) |
| Fisher | 29 (43) |
| Employed | 7 (10) |
| Pensioner | 18 (27) |
| Fisher/Works part-time | 4 (6) |
| Unemployed | 9 (13) |
| Seasonal worker | 1 (2) |
| Total, <i>N</i> (%) | 68 (100) |

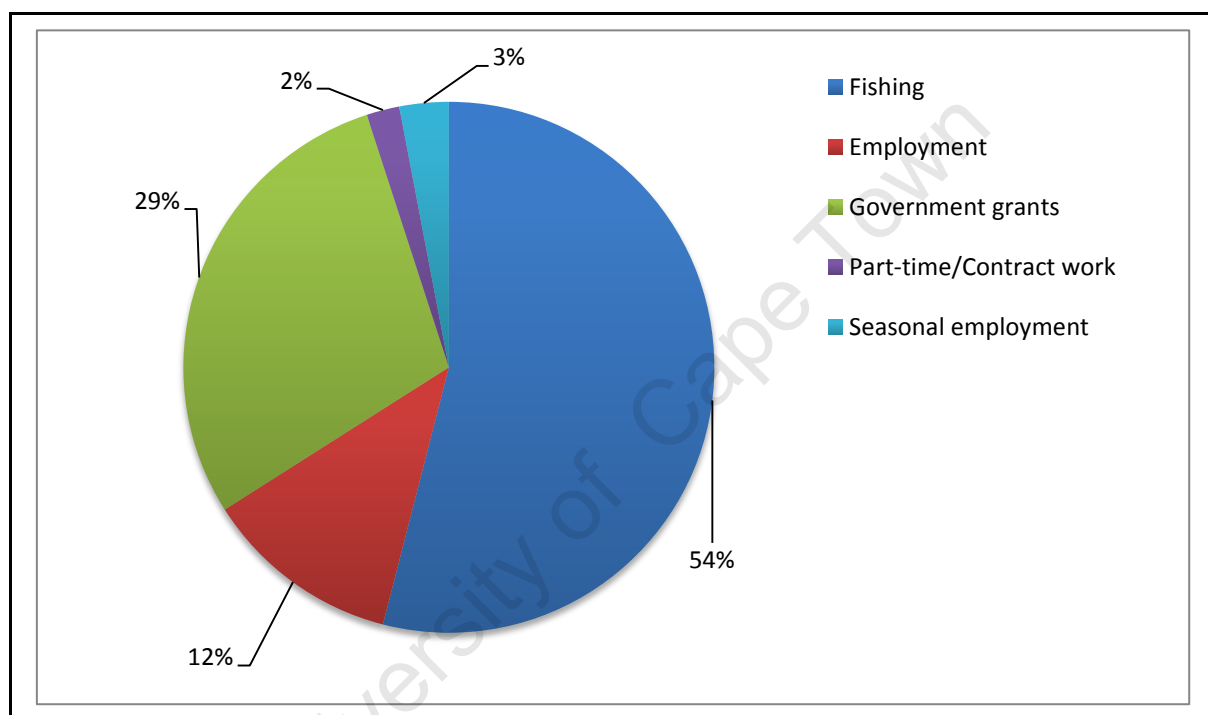


Figure 11. Most important livelihood activity/source for household (household survey undertaken by the researcher with 68 households at Ebenhaeser during September 2010).

As can be seen from the survey results, many households in Ebenhaeser are dependent on a variety of sources or activities to generate an income, but fishing plays a key role in income and as a source of food security. As a rural community, where employment opportunities are few, the role of fishing is regarded as primary. As one fisher remarked: “*dis ‘n belangrike inkomste, want daar is niks om te doen hier nie. Selfs die jong mense stel belang want daar is nie werk hier nie*” (It is an important source of income, because there is nothing to do here. Even young people are interested as there are no employment opportunities)⁴¹. During informal discussions with young adult men, many would

⁴¹ Focus group meeting with ten fishers from Ebenhaeser on 22 October 2009 and comment provided above by Niklaas le Roux. Other fishers present included Hendrik Galant, Jan Fortuin, Daniel van der Westhuizen, Frank Julies, Kevin Peters, Charl le Roux, ‘Oubaas’ Gertse, Dam Cupido, and Patric le Roux.

reiterate these sentiments adding: “*dat ons grootgemaak was uit die rivier, en daarom ken ons nie anders nie, hier is nie werk nie*” (we were raised from the river, that is why we know nothing else, there is no work here)⁴². However, for many of these younger community members, gaining a formal permit to gain access to the fishery and benefitting from the resource may not be possible as only a limited number of access rights for fishing at the estuary are allocated each year (the discussion on rights and rights processes continues in *Chapter Six*).

In some households where the household head was indicated as a pensioner, the researcher would often see three generations living together; where the respondent was not the pensioner, other family members would indicate that this person (pensioner) was the household head. This, the researcher assumed, was out of respect for the elder household member; however, the researcher was also informed that in some households the pension grant is a very important source of income. Consequently, the pensioner would be regarded by other members as the household head. From the survey, four households indicated that even when a fisher worked part-time (in these instances the men would work part-time during the week if the opportunity arose, and would fish primarily over weekends), they were considered to be the household head. Of the sample, 13% indicated that the household head was unemployed. Only one respondent indicated that the household head was a seasonal worker.

5.3.3 The resource and harvesting practices

De Villiers (1987) notes that there is evidence to suggest that *Liza richardsonii* (Southern mullet), or ‘harder’ as it is locally known, was harvested by the indigenous communities inhabiting the Western Cape coastal regions even before the arrival of Europeans. While the numbers may not have been significant, De Villiers (1987) adds that small numbers could well have been taken by means of bows and arrows, fishtraps and spears that these communities used (pg. 851). More official records of landings of harders date back to colonial settlement, more specifically with the Dutch, who discovered the potential for fishing with beach seine nets in the coastal regions of the Western Cape (De Villiers 1987). Among the species regularly recorded were ‘harders’. Testimony of their abundance comes from the diary of Jan van Riebeeck which made reference repeatedly to good monthly catches particularly of ‘harders’ and ‘steenbrasems’ during the first few years after permanent Dutch settlement at the Cape (De Villiers 1987).

The community of Ebenhaeser has been dependent on the Olifants estuary for over a century (Sowman 2003). The tradition of fishing for harders at the estuary (Figure 12) has been sustained by generations and is still practised today.

⁴² Mervyn Afrika, young fisher from Olifantsdrift, Ebenhaeser: informal talk with young people at Ebenhaeser, 24 October 2009.



Figure 12. *Liza richardsonii*, known locally as 'harders', caught at the Olifants estuary, Western Cape, South Africa (Picture: Mariam January, 2005).

Harder is a species of mullet commonly found in the South African coastal waters from Walvis Bay to KwaZulu-Natal. The species frequently occurs in dense shoals in the cooler coastal waters, mainly off rocky points and sandy beaches, and may enter estuaries where tolerance to low salinities enables the young to use these regions as nursery areas (Bianchi *et al.* 1999). In estuaries, this species mainly feeds on organisms known as diatoms. Its average size at maturity can be 22 - 25 cm; however, recordings of larger sized fish reaching 40 cm have been made (Heemstra & Heemstra 2004; Bianchi *et al.* 1999; De Villiers 1987).

During interviews at the case study site, the researcher established that most households in the Ebenhaeser settlements have a member engaged in fishing activities. Fishing predominantly takes place in the Olifants River estuary and harders are harvested with gill-nets (Figure 13). Oral histories from the current fishers indicated that, historically, many would also gradually be drawn into seasonal employment by the fishing companies in Doringbaai (situated 25 km away). Fishers from the Ebenhaeser settlements would therefore travel to Doringbaai for the week during the West Coast Rock lobster season (summer months), returning home on weekends (MDT & LRC 2009). While fishing has predominantly taken place in the estuary, which extends inland for several kilometres, some fishers from the area have also gone out to sea, working in coastal towns along the West coast catching line-fish. Others have worked in other fishing locations along the coast, returning home over weekends or when the job is completed⁴³. Many fishers from Ebenhaeser worked during the week at a fish-processing factory that operated historically in Doringbaai, for instance, returning home to

⁴³ Responses from fishers during focus group meetings, 23 September 2009, Olifantsdrift, Ebenhaeser.

Ebenhaeser on weekends⁴⁴ (see Box 4). Thus, it was considered common practice for fishers to work on the river and out at sea in earlier years.



Figure 13. Fisher with his gill-net at Papendorp (Picture: J Miller, November 2012).

Recent developments, which include the awarding of IRPs (see *Chapter Four*), have resulted in the inclusion of local gill-net fishers from Ebenhaeser in these allocations. These IRPs allow fishers the opportunity to harvest rock lobster at Doringbaai from November to April. At the same time, this relieves pressure on the estuary⁴⁵. Local fishers are able to derive an income from these activities at Doringbaai, as fishing activities at the Olifants estuary are regulated. Based on a management decision, only 45 legal permits were awarded to fishers from the community, although the number of active fishers in the community exceeds this number. Each permit holder is allowed one crew member; therefore, the legal number of fishers allowed to exploit the resource is 90. As gill-net fishing has been prohibited in South Africa's estuaries, the Olifants River is an exception to this. Further discussion on fishing activities in Ebenhaeser is provided in *Chapter Six*.

The following section provides an overview of the policies and legislation applicable to the Olifants River estuary, which have bearing on the gill-net fishery operating in the estuary. This is key in terms of the governance system and processes highlighted in the preliminary conceptual framework (*Chapter Two*).

⁴⁴ Interview with Aggels Blakenberg on 17 March 2011(at Olifantsdrift, Ebenhaeser) who currently lives and works as a fisher in Ebenhaeser, but worked historically as a fisher between Ebenhaeser and Doringbaai.

⁴⁵ Interview with Salvester Donn, fisher and OVV chairperson, at Olifantsdrift, Ebenhaeser, 12 January 2011.

Box 4. Interview with ‘Oom’ Sekkie Afrika (Jakob Jakobus Afrika), a fisher from Ebenhaeser, at Olifantsdrift, Ebenhaeser on 23 September 2010

‘Oom’ Sekkie is a fisherman from Olifantsdrift, Ebenhaeser. Born in 1948 he was the youngest son together with nine other siblings (five girls and five boys). As a child he and his four other brothers together with their father, harvested various species which included harders, ‘barber’, ‘moggel’ and ‘sandvis’ from the river. ‘Oom’ Sekkie adds that his father was a ‘skipper’ who worked on the river and the sea at Doringbaai and it was only natural that the sons also become fishermen. His father passed away when he was sixteen, but together with his brothers and uncle, they continued fishing. During this time he also decided that he would leave school and start working. When he was seventeen he ‘graduated’ from the river and went to work at Doringbaai where they caught West Coast rock lobster for the factory that was established there. He shares some fisher knowledge and adds that they had particular ways of catching West Coast rock lobster and this depended on seasonal factors that would determine the type of lobster that would be caught. From November to June they would catch female lobsters and for the rest of the year mostly males. He adds that this was because from June onwards the females spawn; therefore, one would avoid catching them and only start from November. After working at Doringbaai for two years, he moved on and started working in Lamberts Bay on the West Coast catching ‘snoek’. He proudly adds that he has thoroughly worked the waters of the West Coast. In 1971 at age 23 years he started working on a commercial fishing trawler that took him to the coasts of Namibia and Angola. While working on the trawler, he would be away from home, sometimes for up to four months at a time, and would return home for a few weeks before going back to sea. He adds that during this time at home, he would go back to the river and catch fish for household use mostly, but he would also just go out fishing, as he liked being back on the river where he started out. Sometimes he would sell the catch fresh, other times it would simply be dried and then sold. ‘Oom Sekkie’ adds that people of the area, including himself, had access to small portions of land, but he was not sure how to till land or did not know what to grow. Therefore, his only option has always been fishing. During his active years spent fishing at sea, ‘Oom’ Sekkie worked for two fishing companies, the other based at Saldanha Bay on the West Coast. He adds that he has also worked on a vessel that performed research activities. By 1990 his health started to deteriorate and doctors advised that it would be best to stop working at sea. It was then that he turned to the river again to make a living. ‘Oom Sekkie’ (at age 64 years) is currently still an active fisherman and all three of his sons are fishermen too.

5.4 GOVERNANCE FRAMEWORK: LEGISLATION RELEVANT TO THE OLIFANTS ESTUARY

The Olifants estuary, one of the largest of South Africa’s 279 estuaries with an area comprising roughly 1 499 hectares, is one of the least-developed permanently open estuaries in the country (AEC 2008). The role of estuarine environments has been cited as critical, especially to the health of coastal ecosystems and for the range of services that they provide (Van Niekerk 2007; Lamberth & Turpie 2003; Morant & Quinne 1999). Estuaries are valued for their commercial, industrial, subsistence, recreational and ecological importance and are among the most heavily utilised and productive zones on the planet (Van Niekerk 2007; Attwood 2000). As the meeting point of rivers and the sea, estuaries are regarded as very important features of the South African coastline, which stretches some 3 000 km. Furthermore, as tranquil areas of high productivity, estuaries play a vital role in the lifecycle of many fauna and flora (Harrison *et al.* 2000). While the ecological importance of estuaries is extensive, these areas are also popular sites for human activity and development. As a result of their

aesthetic value, areas around estuaries are often favoured for tourism development. As South Africa's coastline is quite rugged, with few sheltered embayments and strong winds most of the year, estuaries have been a focal point for coastal development (Van Niekerk 2007; Morant & Quinne 1999). These pressures and impacts on estuarine environments have resulted in a review of policies and management approaches relevant to estuaries.

5.4.1 Management and policy context

In South Africa, the management of estuarine environments has historically been bedevilled by a lack of clarity regarding the respective responsibilities between the Department of Water Affairs and DEA (Glavovic & Cullinan 2009). This is due to the fact that estuaries contain freshwater, which by definition falls under the legislation that deals with water resources, i.e. the Water Act (No. 36 of 1998). Estuaries are also classified as marine ecosystems and provide habitat and food for many marine resources; therefore, they fall within the provisions of the MLRA (18 of 1998). The NEM: ICMA (Chapter 4 of Act 24/2008) aims to provide clarity and address gaps with regard to the management of estuaries. Accordingly, the Act requires the development of a National Estuarine Management Protocol to guide the development and management of estuaries (Chapter 4(34)). Policy and legislation which affect estuaries directly can be divided into three categories: (i) water quality and quantity; (ii) land use and infrastructure development; and (iii) living resources within estuaries (Taljaard 2007 in AEC 2008; Van Niekerk & Taljaard 2003). Therefore, a number of national policies and laws, as well as provincial and local government legislation, are applicable to estuarine environments such as the Olifants estuary. These are summarised in Table 8, overleaf.

| Table 8. Summary of national policies and legislation that affect estuarine environments in South Africa (AEC 2008; Van Niekerk 2007) | | | |
|--|---|--|---|
| White Paper/Policy | Act | Brief overview | Regulated activity/development |
| White Paper for Sustainable Development in South Africa (2000) | Integrated Coastal Management Act (No. 24 of 2008) | Provides for integrated coastal and estuarine management in South Africa; Sets out coastal management principles to guide decision making and ensure conservation of coastal zone; Includes a National Estuarine Management Protocol for South Africa and requires that estuarine management plans be developed and implemented for all estuaries | Land use and infrastructure; water quantity and quality; living resources |
| | National Environmental Management: Biodiversity Act (No. 10 of 2004) | Provides the framework, norms and standards for the conservation, sustainable use and equitable benefit sharing of biological resources | Land use and infrastructure; water quantity and quality; living resources |
| | National Environmental Management: Protected Areas Act (No. 57 of 2003) | Provides within the framework of NEMA: the protection and conservation of ecologically viable areas representative of South Africa's biological diversity and its natural landscapes and seascapes and for the establishment of a national register of national, provincial and local protected areas, describes the different types of protected areas that can be declared which may also apply to estuaries | Land use and infrastructure |
| Marine Fisheries Policy for South Africa (1997) | Marine Living Resources Act (No. 18 of 1998) | Regulates living resources use within marine and estuarine areas mainly through licensing; Provides for the establishment of MPAs | Water quantity and quality; living resources |
| White Paper on National Water Policy for South Africa (1997) | National Water Act (No. 36 of 1998) | Ensures the protection of aquatic systems; Defines the environmental reserve in terms of quantity and quality of water | Water quantity and quality |
| | National Heritage Resources Act (No. 25 of 1999) | Provides for the management of national heritage resources (including landscapes and natural features of cultural significance and for participation of communities in the identification, conservation and management of cultural resources | Land use and infrastructure; water quantity and quality; living resources |

continued...

| Table 8 (continued). Summary of National policies and legislation that affects estuarine environments in South Africa (AEC 2008; Van Niekerk 2007) | | | |
|---|---|--|---|
| White Paper/Policy | Act | Brief overview | Regulated activity/development |
| White Paper for Sustainable Coastal Development in South Africa (2000) | Local Government Municipal Systems Act (No. 32 of 2000) | Requires each local authority to adopt a single, inclusive plan for the development of the municipality intended to encompass and harmonise planning over a range of sectors such as water, transport, land use and environmental management | Land use and infrastructure; water quantity and quality; living resources |
| White Paper on Integrated Pollution and Waste Management for South Africa (2000) | Marine Pollution (Control and Civil Liability) Act (No. 64 of 1987) | Provides for the protection of the marine environment from pollution by oil and other harmful substances, the prevention and combating of such pollution and the determination of liability in certain respects for loss or damage caused by the discharge of oil from ships, tankers and offshore installation | Water quantity and quality; |
| White Paper: Mineral and Mining Policy for South Africa (1998) | Mineral and Petroleum Resources Development Act (No. 28 of 2002) | Act contains the statutory requirements regarding the enforcing of environmental protection and management of mining impacts, including sand and coastal mining | Land use and infrastructure; water quantity and quality |
| | National Environmental Management Act (No. 107 of 1998) | Provides for co-operative environmental governance through the establishment of national environmental management principles; provides that sensitive, vulnerable, highly dynamic or stressed ecosystems such as estuaries requires specific attention in management and planning procedures especially where subjected to significant human resource usage and development pressure | Land use and infrastructure; water quantity and quality; living resources |

As estuaries provide breeding and habitat functions to fisheries resources, they are key in terms of regulating fish stock health. The management and control of living resources within estuaries are dealt with under the MLRA (18 of 1998). The Department of Forestry and Fishing (DAFF) is mandated to manage marine resources and the implementation of the MLRA is vested with the Fisheries Branch of DAFF. As the primary purpose of the MLRA is to protect marine resources (including that of estuaries), it overrides all conflicting legislation related to marine living resources (van Niekerk 2007).

Various elements in the legal instruments (Table 8) suggest some level of protection for estuaries and management strategies must be developed for environments such as the Olifants estuary. In the ICMA (2008a), for example, the section that deals with estuaries states the following:

- Estuaries are to be managed in a co-ordinated and efficient manner in accordance with a national estuarine management protocol;
- The national estuarine management protocol must:
 - (i) Determine a strategic vision and objective for achieving effective integrated management of estuaries;
 - (ii) Set standards for the management of estuaries;
 - (iii) Establish procedures or give guidance regarding how estuaries must be managed and how the management responsibilities are to be exercised by different organs of state and other parties.

In relation to the actual management plan the Act states that the responsible body who develops an estuarine management plan must:

- (i) Follow a public participation process;
- (ii) Ensure that the estuarine management plan and the process by which it is developed are consistent with the national estuarine management protocol and the national coastal management programme (ICMA 2008a, Chapter 4, Sections 33 - 34).

As the development of an estuarine management plan is a requirement of the ICMA, consultants were appointed in 2008 to develop an estuary management plan for the Olifants River estuary. However, while general guidelines exist in the act in terms of how this process should occur, the processes and outcomes of developing such plans differs in practice. The development of a management plan for the Olifants River estuary has been an example of the various degrees of complexity and challenges that such processes encounter. In *Chapter Six*, the process that was embarked upon in developing a

management plan for the Olifants estuary is discussed. Also discussed, as it is another key process that has bearing on governance, is the development of the new SSFP. These policy processes are vital for access at the Olifants River estuary, as an existing policy directive of 2005 proposes the phasing out of gill-net activities at the estuary – a decision that has been vehemently opposed by local fishers (further discussion in *Chapter Six*).

5.5 HISTORICAL OVERVIEW OF COVIE

5.5.1 The establishment of a woodcutter location

The area of Covie, located in the Southern Cape (See Figure 14), lies amid fynbos⁴⁶ and indigenous forest on the cliffs high above the rocky Tsitsikamma coast (Delius 2002). The Tsitsikamma has a long history and is more notably known for its forests and wood-cutting activities. The village of Covie was established in the Tsitsikamma forests as a woodcutter's settlement in 1883. According to Delius (2002), woodcutter communities worked the narrow belt of indigenous forest that straddled the coast and the parallel mountain ranges. The value of these forests was acknowledged early in South Africa's colonial history with the Dutch East Indian Company taking possession of many of the Cape Colony's forests. They issued several plaacaats and ordinances applicable to forests and forest activities which, among others, included the fixing of wood prices (Sim 1907). The proclamations published by the government (under the Netherlands East India Company) were in effect between 1652 and 1806. The first plaacaat having reference to timber was Number 33 dated 2 October 1658: "Plaacaat against cutting wood in the Company's forests. Freeman forbidden to sell firewood to lime or brick-burners or to foreigners without notice" (Sim 1907). During the period of Dutch rule 1 200 laws applicable to forests were issued.

The value of the forests and its products was key to the operation and development of industries that grew during this time. Earlier writers on the history of the Knysna forests in the Southern Cape, for example, wrote: "In 1820 a number of transports were sent with timber to England for shipbuilding. It was not approved of and the Naval reserve was given up in consequence. Subsequently, the forests seem to have been declared open, under certain conditions. Wood cutting was the only industry pursued and wood the only currency" (Sim 1907).

With decades of wood production and exports, the management of the forests left much to be desired. Many reasons were provided for the neglect and mismanagement of the forests, but some of the common reasons included that the management of forests was in the hands of different authorities and

⁴⁶ Fynbos is an endemic natural shrub that occurs in the coastal and mountainous areas of the Western Cape province of South Africa.



Figure 14. Map showing the location of the Covie case study area.

departments and this made management very difficult (Sim 1907). In the case of the ‘Zitzikamma’⁴⁷, its forest was under the Conservator of Forests. In terms of compliance of forests laws, there were also no proper checks on rangers, nor did the rangers have any checks upon woodcutters. The conditions of the forests raised several concerns and, in 1866, discussions on forest reformation were taking place (Serfontein 2006). A year prior to this, a report by the Conservator of Forests in George recommended that the only way to effectively curb the destruction of forests would be to lease plots at fair and reasonable rates. This resulted in varied responses and was ultimately thrashed out in Parliament. Some of the suggestions made included the total closure of the Crown Forests⁴⁸, while

⁴⁷ Earlier spelling of ‘Tsitsikamma’.

⁴⁸ Almost all forests during Colonial times were demarcated as Crown Forests and according to Forest Act 28 of 1883 Crown forests are defined as: “Crown Forest: shall consist of Demarcated forest and Undemarcated forests”; “Demarcated forests: shall include areas that have been surveyed or demarcated and declared by

others called for a system where the forests could be closed by section for certain periods of time. Following these public submissions a Commission was appointed to enquire into the workings of the Crown forests. After sifting through vast amounts of information, a report was compiled in May 1868. It was apparent from the proposals submitted to Parliament in 1866 that the idea that the forests should be worked in sections only, had impressed many, although the idea of selling or letting them still had a significant number of supporters. While forest officials denied and disputed evidence of alleged abuses regarding the forests and questioned why restoration was necessary, a system was introduced into the 'Zitzikamma' in 1866 in which felling and subsequent rest of restricted areas were adopted (Sim 1907; Serfontein 2006). Further development after the introduction of this system saw recommendations for the reduction of license fees and that woodcutter villages be established. These villages were to be no less than two acres, be leased at a small annual land tax for a term of about 30 years, on condition that a cottage be erected, the land be tilled on each allotment, and that the forest conservator exercised general superintendence (Sim 1907).

The protection and exploitation of the forests of the Cape Colony, including Tsitsikamma, endured a chequered history. According to Sim (1907), the so-called protection afforded by the Government was, for many years, actually legalised destruction. It was only after the passing of the Forest Act (28 of 1888) that the officials in charge had adequate powers to try to manage forestry. Under colonial occupation, most of the forests were demarcated as 'Crown Forests'; these were protected and managed under various ordinances and placats in earlier colonial history and, with the passing of the Act of Parliament (28 of 1888), a coherent system of managing the forests could be implemented.

With vast changes in policy and the management of the forests, this would impact greatly on woodcutter communities who worked the forests as part of their livelihood activities (Sim 1907). It was noted in a report by the Superintendent of Woods and Forests that many of the woodcutters were without work or provisions, some having to diversify their livelihood activities and rely more on fishing activities, or having to subsist on fish (Brown 1978). These changes regarding the existing indigenous forests and the establishment of new plantations, prompted the government of the Cape Colony to look into the abject conditions of the woodcutter communities. As they were too poor to

Notice in the Gazette to be forest and shall include all pieces or portions of Crown land set aside as being forest or the complement of a forest or intended for the site of a plantation or for afforesting operations"; "Undemarcated Forest: shall include Commonages or Native Locations or any other land on which the Crown retains a right growing therein or thereon and all vacant Crown land on which trees are growing or have grown"; "Forest produce: shall include the following things when found in or when brought from a forest- game, fish, minerals, stones timber, firewood wattles, kraal wood, branch wood, slabs, chips, sawdust, plants, grass, reeds, match, rushes, leaves, moss, flowers, ferns, fruit, seeds, roots bulbs, galls, spices, bark, gum, resin, sap, charcoal, honey, wax, horns ivory and generally everything growing or contained within a forest".

purchase land, it was recommended that land should be granted to them at fixed rents (Barnado⁴⁹; Delius 2002). It was further decided that the allotment of land would only be granted to all registered woodcutters based on motivations put forward in Parliament. Delius (2002) adds that a demarcated piece of land named Covie was a strip of fynbos with some pockets of indigenous forest which had previously been cleared and cultivated by locally based woodcutters. In 1883 it was reported by the Surveyor General that he had surveyed this land into 30 lots with an average erf size of 2.5 morgen⁵⁰. At the time of Covie's establishment, the settlement had white and coloured woodcutters residing in the area. Some of the details of exactly how the recipients of this land were selected remain unclear (Delius 2002), but descendants of long-established woodcutter families note that, according to oral history, the land was given to them by Queen Victoria of England after hearing about the plight of the woodcutter families of this area. One such family, who can be described as the founding members of Covie, the Barnardo family, have played an important role in the history of this community. Still residing in Covie today, descendants of the Barnardo family recall Covie as their grandfather's land. During an interview in October 2010 Mrs Irene Barnardo notes:

“My oupa was mos een van die boswerkers wat hulle genoem het houtkappers. Nou, hy was nou een van hulle. Hulle was mos ‘n klompie geregistreerde boswerkers wat hierso in die bosse gewerk het. Maar toe hulle nou hier in Covie kom werk ... hier’t nie mense gebly nie ... Nou, toe’t hulle aansoek gedoen by die staat om grond soos erwe aan te koop vir verblyf vir hulle, want hulle weet hulle’s nou vir jare hier. Daai tyd was dit die regering van Queen Victoria. En hulle het toe ingestem, maar dié mense kan verblyf kry. En toe het hulle hier, want dit was alles staatsgrond, toe’t hulle nou hier 30 persele uitgensy. Net 30. In 1883 het hulle nou aansoek gedoen, toe hulle hier begin werk het, het hulle aansoek gedoen vir die gronde. En in 1884 toe is daai koop deur, toe kry hulle hulle gronde.” (My grandfather was one of the woodcutters. He was one of them. They were many registered woodcutters that worked in the woods. But when they came to Covie, to come work here, there were no people here. Then they applied to the state for land for living and working as they have been here for years. Back then it was the government of Queen Victoria. And they agreed, and the people could stay. As it was all state land they could divide it into 30 lots. Only 30. In 1883 when they started working here they could apply for the land. And in 1884 that sale went through, that's when they got their land.)

This recollection of events is how many of the descendants of the Covie community believe their land was acquired. This is what prompted community members and surviving descendants of the Barnardo

⁴⁹ Interviews and personal communication with Mrs Irene Barnardo, Covie resident, interviewed at Covie during 2009 and 2010.

⁵⁰ 2.5 morgen approximately 2.1 hectares (G32-84, Report of the Surveyor General 1883).

family to lodge a land claim (discussed later in this chapter) in order to be acknowledged as the legitimate owners of Covie.

5.5.2 The end of a woodcutter's era

With continued shifts and transformation in the wood and forestry sector during the last remaining years of the 1800's, change was inevitable for the woodcutter communities of the Tsitsikamma area. The forest continued to play a role in local community livelihoods, with fishing supplementing woodcutting (Delius 2002). Members of the woodcutter communities found greater degrees of control being exercised by the authorities, which resulted in even greater levels of poverty among the communities (Serfontein 2006). Brown (1877) further adds that shifting forestry policies placed greater emphasis on capitalist production, scientific management, the protection of indigenous forests and the establishment of plantations of exotic trees. These changes meant that the Covie settlement was slowly being reshaped by these wider processes, with its inhabitants remaining some of the most impoverished in the region (Delius 2002).

While many families at Covie engaged in a number of activities to sustain their livelihoods, including keeping livestock, the Bernardo family were the only coloured family with oxen. Sweet potato was the staple crop grown and, as some of the current Covie residents still remember, this had always been an important crop. One resident laughingly remarked:

“Die beleid van Covie was soos hulle hom genoem het hier, vis en patat. Hulle sê vir hom die droë patat. Dan sê hulle die vis en patat is Covie se kos.”⁵¹ (The policy of Covie was as they called it here, fish and sweet potato. They called it the dry sweet potato. Then they said the fish and sweet potato are Covie's food.)

Small-scale agriculture and fishing continued to play an important role in terms of subsistence, recreation and income (Kleinbooi & Lahiff 2007). Many residents could recall stories that their parents and grandparents told them about earlier years at Covie. The late Mr Flippie Dixon (the oldest male resident, aged 92 years at the time of interviewing) remembered some of these stories and added that people at Covie engaged in many activities to make a living. Some had garden plantations, others kept a few livestock and people would fish for their households. He remembered how, when he was a child, the women of the area fished from the rocks with a stick. He said as children they needed to help, and that the fisher women mostly fished for household use and for trading with neighbours⁵².

⁵¹ Interview with Percy Barnardo, Covie resident, interviewed at Covie, December 2010.

⁵² Interview with Mr Flip Dixon, Covie resident, interviewed at Covie on 22 June 2009.

Another resident, Michael Alexander⁵³, recalls how fishing occurred over weekends or whenever there was a need, adding:

“Ons, wat inwoners hier van Covie was, vernaam vakansietye dan gaan ons by die see uitkamp. Sommer vir ‘n hele week of so. Ons vang vis, ons bly daar by die see, braai vis en maak vis gaar daarso. Ons vang vis tot daai hele week om is, dan kom ons weer huis toe.” (We, who were residents of Covie, would go and set up camp at the sea, especially during holiday times. We would stay a week sometimes. We would fish, we stayed there, prepared fish to eat there. We would fish that whole week, and then we would return home again).

He added that various species – including galjoen (*Dichistius capensis*), red roman (*Chrysoblephus laticeps*) and white steenbras (*Lithognathus lithognathus*) – were caught with a hand-line and reel from the fishing spots below the Covie settlement.

As Smith and Smith (1966) note, legend and science concur that these waters teemed with fish. Delius (2002:143) adds that the fishing sites were, however, not easily accessible, and fishermen and women had to keep a wary eye on the sea as they were in real danger of being swept off their rocky perches by unpredictable swells which periodically welled up out of the deep coastal waters below the cliffs. However, fishing, as some residents describe, was for the most part for subsistence purposes, and when there was a surplus, it was either traded with neighbours or sold.

The establishment of a small fishing community had developed down at the coast at a sheltered cove at the mouth of the *Sout Rivier* (Salt River) (Figure 15⁵⁴), not far from the main settlement of Covie. Those who resided there were members of the Covie community. As a result of being engaged in fishing activities, they decided to erect temporary housing instead of moving between the main settlement and the *Sout Rivier* mouth during favourable fishing periods⁵⁵. Some of the Covie residents had shares in the wooden rowing boats, better known as ‘*skuite*’⁵⁶, which were kept at a boathouse⁵⁷. Mrs Irene Barnardo adds that her grandfather, Jan Barnardo, discovered the *Sout Rivier* mouth area and that they (the people of Covie) were responsible for building the boathouse. Mrs Barnardo’s father, Frank Barnardo, owned one of the big ‘*skuite*’, the *Daphne*, which capsized after a fishing trip in 1953. The poem ‘*Verlore en Verlate*’ in the dedication page at the beginning of this thesis is a recollection of that event by Mrs Barnardo. While interviewing in the neighbouring community of Coldstream, the researcher was informed by former Covie residents that not everyone living at Covie

⁵³ Interview with Michael Alexander, Covie resident, interviewed at Covie on 2 September 2009.

⁵⁴ Figure 15 is an artistic depiction by Mrs Irene Barnardo of how the Covie settlement historically looked with its self-made houses and the Sout Rivier mouth to the right.

⁵⁵ Interview with Mrs Irene Barnardo, Covie resident, interviewed at Covie, 2 September 2009.

⁵⁶ Rowing boat.

⁵⁷ Interview with Mr Cecil Roberts, former Covie resident, interviewed at Hermanus, Western Cape, April 2009.

was involved in forestry or the plantations; rather some were actively engaged in fishing which extended beyond for household purposes. Mr Cecil Roberts, who grew up at Covie, added that his father was involved with the 'skuite', and that fish was sold on many occasions to the surrounding communities. If not sold, it was traded with neighbouring communities. Furthermore, fishing was not only restricted to those who went out to sea on the 'skuite'; rather, many community members, including women, would fish with a stick and line from the rocks.

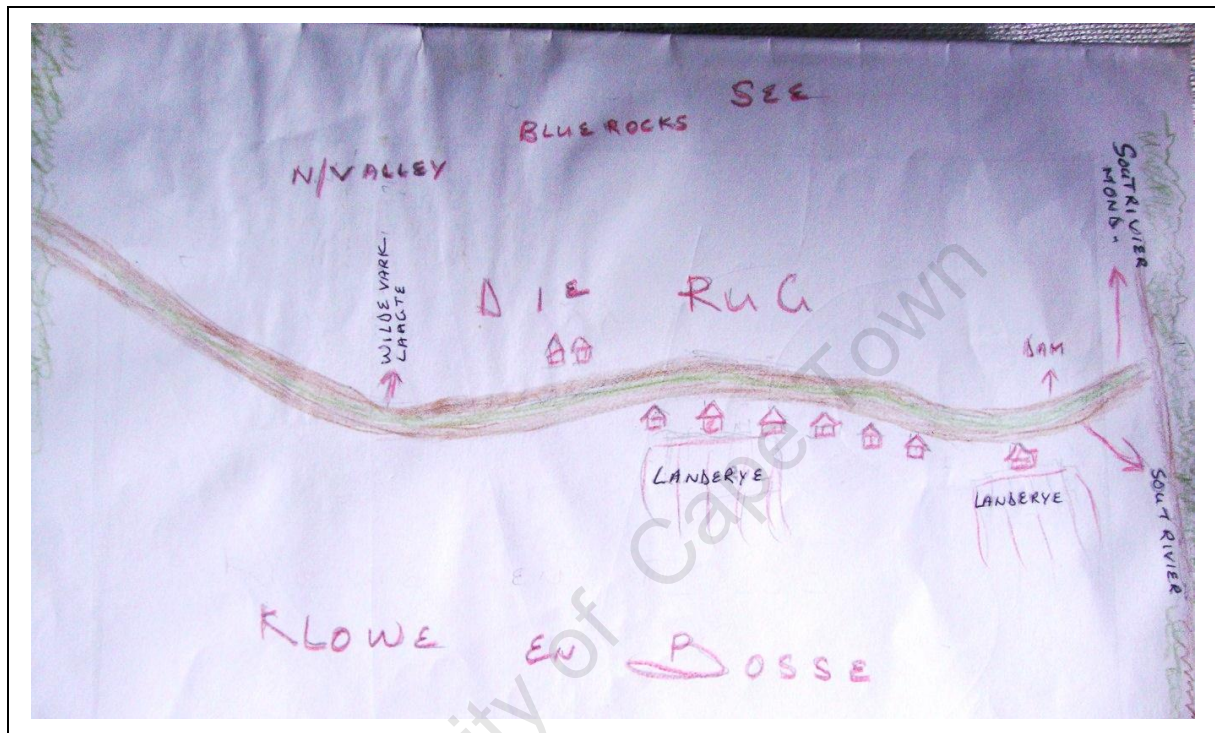


Figure 15. Illustration by Mrs Irene Barnado of the Covie settlement and the *Sout Rivier* mouth to the right, as she recalled the settlement as a child with its local names⁵⁸ (Covie, November 2010).

By the 1920's and 1930's the intensity of woodcutting rapidly diminished as a result of over-exploitation. This was accompanied by the introduction of new environmental legislation by the Department of Forestry, which declared parts of the indigenous forests closed off for a period of 200 years (Kleinbooi & Lahiff 2007). Consequently, strict controls were initiated and the forest around Covie was closed by 1935 (Philips 1963). This meant the end of an era for the Covie residents who had benefitted from the close proximity to the indigenous forest, as they were no longer able to go into the forest to cut wood (Deliuss 2002). The introduction of restrictions and the closing of the forests, led a number of Covie residents to seek new opportunities elsewhere, and some of them sold,

⁵⁸ Translated text and description on illustration: Die Rug - Die Rug (i.e. rocky and cliffy areas); N/Valley - the settlement of Natures Valley; Blue Rocks - an area frequented by community members for fishing; See - sea; Sout Rivier mond - Salt river mouth; Sout Rivier - Salt River; Dam - dam; Landerye - crop fields; Klowe en Bosse - Gorges and bush.

abandoned or let their plots (Delius 2002). For those who remained behind, life became increasingly difficult. Those who left sought employment on plantations and the nearby sawmills, and many were absorbed by the Forestry department. Others, especially women, found long-term employment in towns such as Plettenberg Bay and the cities of Port Elizabeth and Cape Town. This period marked the beginning of what Delius (2002) termed the slow ‘strangulation’ of Covie by the Department of Forestry.

5.5.3 The dawn of apartheid

With vast changes in the political landscape of the country and the intensification of racially based policy taking centre stage, this time also saw the decline of the white population at Covie (Kleinbooi & Lahiff 2007). Better employment and educational opportunities for whites elsewhere, limited services at Covie and the growing stigma of racial mingling, spurred the exit of white families from Covie (Delius 2002). By the end of the 1930’s Covie was predominantly a coloured community with a trend that coloured tenants would settle on white vacated land. After 1948, the intensification of racial classification and discrimination in the wider South African society, too, seeped into the life of this settlement (Delius 2002). By the end of the 1960’s, only three white families remained and resided at Covie⁵⁹. Those relationships and bonds formed across race lines dissipated, while very few remained. A Covie resident, the second oldest woman still residing there recalls this time of change:

“Kyk nou, van die mense wat hier was, blanke mense wat hier gewees het, hulle’t toe gechange, Kyk Apartheid is daar, blankes moet nou nie met ons kleurlinge saam wees nie. Toe is die mense so, hulle hou hulle so eenkant en jy moet; jy kan ook nie by die voordeur inkom by hulle nie, jy moet by die kombuisdeur inkom en so is die mense toe. En die kinders ook, baklei met ons. Toe het hulle heeltemal anderste geraak, want dis mos nou apartheid. En toe, toe is dit nie meer ... Net die Wyatt, Mister Wyatt-hulle, hulle het nie gechange nie, hulle was dieselfde⁶⁰.”

(You see, some of the people who were here, the whites, they changed, see apartheid was here, whites should not mix with coloureds. And people were like that, they kept to themselves and you had to do the same; you could no longer enter through their front door, you needed to use the kitchen side door. And the children, they fought with us. And then they changed completely, because apartheid was here. And it was no more. Only the Wyatt, Mister Wyatt – them, they did not change, they were the same.)

⁵⁹ Interview with Mr Gert Victor, white Covie land owner, interviewed at Humansdorp, Eastern Cape, September 2008. Mr Victor’s family was some of the last remaining white residents of Covie.

⁶⁰ Interview with Aunty Floorie Whitebooi, interviewed at Covie on 12 October 2010.

5.5.4 The proclamation of the Tsitsikamma National Park (TNP)

A major setback that ensued and impacted vastly on what was left of this community, came in the form of the proclamation of the Tsitsikamma National Park (TNP) in 1964. With calls being made at the first world conference on national parks in 1962 to expand conservation areas, the South African National Parks Board took up this appeal and identified a narrow strip of the Tsitsikamma coast as an ideal location for the country's first marine park (Faasen 2006). Delius (2002) notes that before its proclamation, however, several pitfalls were encountered. The first was related to heated opposition from angling associations from neighbouring settlements and local fishers who resisted the prospect of loss of access to fishing spots. The second was that the Covie commonage (communal land) stretched down to the sea and included the most southerly section of the envisaged park. To this, the park's authorities responded that the area seaward of the 400-foot elevation that they wished to include, was not used by the inhabitants of Covie (Delius 2002).

There is little evidence of serious negotiation and consultation with Covie and other communities on the impact of the incorporation of a section of the commonage into the national park prior to its proclamation (Faasen & Watts 2007). Angling was phased out over a ten-year period and, by the 1970's, angling was completely prohibited (Delius 2002; Kleinbooi & Lahiff 2007). Fishing could still occur at Nature's Valley and at the Storms River Mouth, but these areas were relatively far away. By 1976, access to the mouth of Storms River was restricted, on the grounds that the fishermen's activities were unsightly and ecologically detrimental (Delius 2002).

5.5.5 Contestations over Covie

With the intensification of racial segregation, further contestations came in the form of whether Covie should be declared a coloured or white settlement. Discriminative legislation, such as the Group Areas Act (41 of 1950) in effect in South Africa, enabled actions that resulted in people of colour being dispossessed of land that they owned or to which they had rights. During this time, some white owners in close proximity to the area of Covie called for the area to be declared a white area and that the coloured residents be moved (Delius 2002). For those few remaining white residents at Covie, the Department of Forestry advised that they could reside at Covie until a new housing settlement, called Lottering, had been completed (Kleinbooi & Lahiff 2007). At the same time, motivation for its recognition as a coloured settlement was also heard as the Coloured Persons Representative Council (CPRC) argued that the Group Areas Act (41 of 1950) has been used to strip communities of their land. They argued that these communities had not been given anything in return and that Covie had been a solely coloured settlement with a 'slow infiltration of whites' (CPRC Proceedings 1974, in Delius 2002).

Pressures over Covie's designation were not only forthcoming from the white land owners of the area. The Department of Forestry expressed great interest in Covie's stands (plots). Delius (2002) notes: "the Department's reasons for wanting to acquire the stands as well as the commonage reflected merged anxieties about colour and control". Some local officials argued that it was impractical to have private land in the middle of state land, with evident risks of fire and trespassing. With services already limited at Covie and plans to establish a coloured township nearby, The Craggs, these negative perceptions towards the settlement continued. With combined pressure from white land owners and the Forestry Department, meetings were held with the Department of Planning. Here, Forestry was re-assured that the proclamation only applied to Covie's stands and not to the commonage, and that no further development of the settlement would be initiated (Delius 2002).

As some of the coloured landowners and tenants of Covie were employed by the Forestry Department at the Coldstream Forestry Station, continued pressures to relocate them to this area, which is about 20 km away, intensified. A former Covie resident residing at Coldstream recalls: "*Toe loop werk hulle mos by Bosbou. Die ou van Bosbou sê toe hulle, die mense moet uit Covie verskuif. 'n Verplasing kry Coldstream toe ... Hulle ry ons uit Covie.*"⁶¹ (And then they worked at Forestry. The man from Forestry came and said that the people must move from Covie. We're relocating to Coldstream ... They drove us out of Covie). Another recalls:

*"Hulle het ons ook somer daai dag, daar kom haal en almal pak nou en ons moet nou Coldstream toe kom en trek. Hy't daar gekom en gesê ons moet nou saam daar kom. Ons kon nie vra hoekom of waarom nie."*⁶² (They came on that day and fetched us and everyone had to pack and should move immediately to Coldstream. He came there and told us we should come. We could not ask why.)

Pressure from the Department of Forestry and threats of facing criminal prosecution intensified. As a result, some families relocated to Coldstream (Witbooi & Lahiff 2007). Coldstream was also located away from the sea and did not have the open spaces of Covie and the possibilities that Covie offered for various forms of gardening, which supplemented livelihoods⁶³.

In interviews many respondents remarked that some families were reluctant to move, but fear of losing their employment took precedence and people reluctantly left Covie⁶⁴. The threats to relocate the remaining families to The Craggs continued. Those who resisted the move lost their employment

⁶¹ Comment by Lorenda Savage, former Covie resident, during a focus group session at Coldstream, in October 2010.

⁶² Group Interview with Freda Boezak, former Covie resident, interviewed at Coldstream, in October 2010

⁶³ Comment by Thomas Booysen during a focus group session at Coldstream with Alice Booysen and Gwen Plaatjies at Coldstream, in October 2010.

⁶⁴ Comment by Ingrid Dixon during a focus group session at Coldstream, in October 2010.

with the Department of Forestry and were forced to leave Covie to seek employment elsewhere (Kleinbooi & Lahiff 2007). After these contestations, however, Covie was declared a coloured group area in 1978 under the Group Areas Act (Kleinbooi & Lahiff 2007).

5.6 COVIE: THE CASE STUDY AREA

5.6.1 Community characteristics

Present-day Covie does not reflect the variety of activities from its earlier years. As a result of years of neglect this settlement and its community have seen little development. The area is accessible by a gravel road, with a few scattered self-built houses located on the property⁶⁵. As a result of the pending land claim, very few households are settled on the land and at time of conducting fieldwork all 22 households at Covie were included in the survey (See Table 9).

| Table 9. Gender and age range of respondents | | | | | | | |
|--|---------------------------|---------|---------|---------|---------|-----|----------|
| Gender | Age of respondent (years) | | | | | | Total, N |
| | 18 - 27 | 28 - 37 | 38 - 47 | 48 - 57 | 58 - 67 | ≥68 | |
| Female | 0 | 0 | 1 | 1 | 0 | 0 | 2 |
| Male | 0 | 5 | 8 | 5 | 2 | 0 | 20 |
| Total | 0 | 5 | 9 | 6 | 2 | 0 | 22 |



Figure 16. (a) Gravel road leading into Covie; (b) Self-built wooden house at Covie.

The inhabitants are coloured people, with families dependent on a variety of government grants and wage labour to sustain their livelihoods (See Table 10 and Figure 17). Very limited land-based

⁶⁵ Personal observations during several field visits during 2008 - 2010. Also see Figure 16.

activity is occurring, which is evident as large areas of the commonage and residential gardens are overgrown with alien plants and fynbos⁶⁶.

5.6.2 Fisher Livelihoods

Fishing is an activity still undertaken by community members, with some purchasing a recreational fishing licence and then travelling to Nature's Valley to fish⁶⁷. While conducting fieldwork in Covie and the surrounding community of Coldstream (20 km away), where many former Covie residents and descendants live, the researcher was informed from several interviewees that many people fish 'illegally' in the MPA. While knowing that it is not allowed, many added that they have no choice or that they feel that they have a right to do so as this was once part of Covie's land⁶⁸. Community activities with regard to accessing fisheries resources and how people continue to access fisheries resources will be discussed in the results chapter (*Chapter Seven*).

| Table 10. Livelihood activities of household head | |
|---|--------------|
| Position | <i>n</i> (%) |
| Fisher | 3 (13.6) |
| Employed | 7 (31.8) |
| Pensioner | 3 (13.6) |
| Fisher/Works part-time | 7 (31.8) |
| Unemployed | 2 (9) |
| Seasonal worker | 0 (0) |
| Total, <i>N</i> (%) | 22 (100) |

⁶⁶ Personal observations during several field visits during 2008 - 2010.

⁶⁷ Interview with Mr Johannes Toring, community member, at Covie on 2 December 2009.

⁶⁸ Interview with Mr George Botha at Coldstream on 2 December 2009.

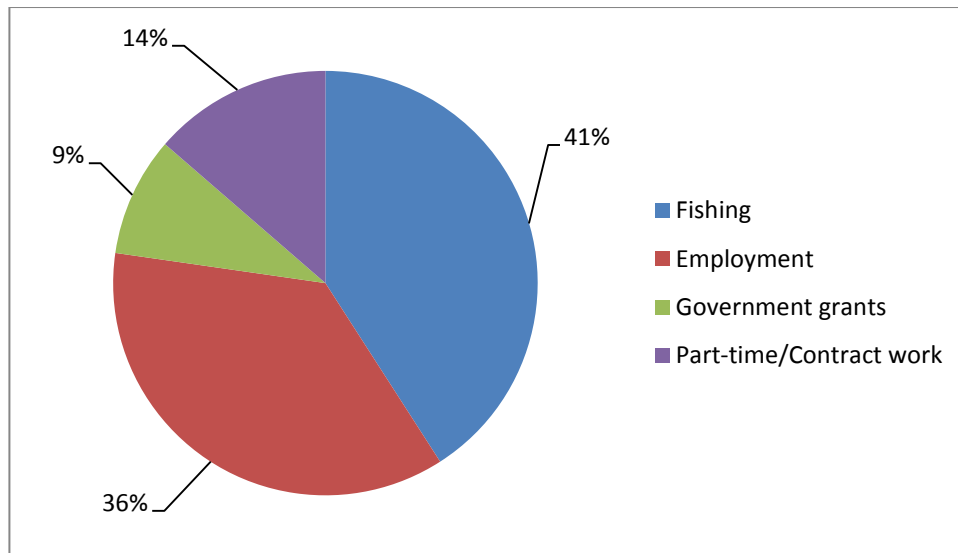


Figure 17. Most important livelihood activity/source for household (household survey undertaken by the researcher with 22 households at Covie during October 2010).

5.6.3 The Covie land claim

After democratisation in South Africa, the government embarked on the LRP to ensure that those individuals and communities that were unfairly dispossessed of their land, would receive compensation or have their land restored, or have alternative land granted to them (Walker *et al.* 2010). Communities and individuals, therefore, in accordance with the Land Restitution Act of 1994, had a legal instrument to assist them in lodging a claim that would see them reclaiming their status as the owners of this area. The Covie land claim was lodged in 1998 by Mrs Irene Barnardo, on behalf of the community who still reside in Covie. The land in the claim included seventeen plots and 733 hectares of public land. The claim also included a claim for compensation of the coastal strip incorporated into the TNP (Conway & Xipu 2010). This area allowed the community access to the sea for fishing, which formed part of their livelihoods, culture, identity and community life. The portion of 140 hectares of the commonage land facing the sea was proclaimed protected land in 1974 and is now incorporated in the TNP (Witbooi & Lahiff 2007). Table 11 lists the 30 allotments and their owners after the declaration of Covie as a coloured group area. The title deeds terminated following the proclamation of the commonage are summarised in Table 12. Kleinbooi & Lahiff (2007) adds that white land owners received compensation accordingly and, when expropriation orders were implemented for white owners between 1979 and 1982, this saw use rights to the commonage relinquished and the title deeds deregistered. With Covie's establishment as a coloured settlement, the expropriated properties were taken over by the Community Development Board, later vested by the National Housing Board. After the departure of whites from Covie, the state started leasing vacant erven to coloured people (Kleinbooi & Lahiff 2007).

Table 11. Allotments after the declaration of Covie as a coloured group area (source: Covie Summary Report. Addendum to the Covie Land Claim [RLCC: George], in Kleinbooï & Lahiff 2007)

| Erf | Owner |
|-----|--|
| 257 | National Housing Board |
| 258 | National Housing Board |
| 259 | National Housing Board |
| 260 | National Housing Board |
| 261 | Andrew Barnardo: White owner |
| 262 | Schalk Willem Burger: White owner |
| 263 | Anglican Church |
| 264 | National Housing Board |
| 265 | National Housing Board |
| 266 | National Housing Board |
| 267 | Archibald Arthur Wyatt: White owner |
| 268 | National Housing Board |
| 269 | National Housing Board |
| 270 | National Housing Board |
| 271 | Thomas Victor: White owner |
| 272 | Elizabeth Irene Barnardo: Coloured owner |
| 273 | National Housing Board |
| 274 | Jean Davids: Coloured owner |
| 275 | National Housing Board |
| 276 | National Housing Board |
| 277 | Claudius Barnardo: White owner |
| 278 | Hendrik Pedro: Coloured owner |
| 279 | Isaak Boesak: Coloured owner |
| 280 | John Dixon: Coloured owner |
| 281 | Danny Stander: Coloured owner |
| 282 | Petrus Christian: Coloured owner |
| 283 | National Housing Board |
| 284 | Magdalena Pedro: Coloured owner |
| 285 | National Housing Board |
| 286 | National Housing Board |

Table 12. Title deeds terminated following the proclamation of the commonage as protected area (source: Memorandum. The Covie Land Claim, District Knysna, Western Cape Province [RLCC: George], in Kleinbooï & Lahiff 2007)

| Erf | Owner | Extent (hectares) |
|-----|------------|-------------------|
| 261 | A Barnardo | 1.7741 |
| 271 | T Victor | 1.9201 |
| 272 | F Barnardo | 2.1295 |
| 274 | J Barnardo | 2.0486 |
| 278 | H Pedro | 1.9260 |
| 279 | I Boesak | 2.1924 |
| 280 | J Dixon | 1.8711 |
| 281 | D Stander | 1.9979 |

One of the first challenges that the Covie community faced after lodging the claim was to convince the CRLR that they had rights to compensation through the restitution program. A process of

collecting oral evidence and supporting this with documentation was started⁶⁹. Additionally, the community joined a regional forum of claimant communities, known as the Southern Cape and Karoo Land Restitution Forum (SKKLRF)⁷⁰. This body consisted of 32 claimant lobbying communities who organised themselves into a forum to strengthen their lobbying and mobilisation strategies (Conway & Xipu 2010). In 2004, when formal validation of the claim was completed, the Land Claims Commission (LCC) offered to settle the Covie claim and suggested a public signing of a 42 D agreement, which meant that the land would be handed over before verification of the claimants was done or the necessary institutional arrangements were put in place (Kleinbooi & Lahiff 2007). The community was reluctant to settle and, through their involvement with SKKLRF, they were aware of other claimant communities who ‘settled’ and later struggled to secure the benefits of their settlement⁷¹. The community declined signing this agreement and insisted that a development plan for the area be drawn up before any land transfer took place, for the purposes of ensuring that the necessary institutional arrangements were clarified. The criteria to establish membership of the Covie community was done in consultation with the original claimants and with the Southern Cape Land Claims Commission (SCLC), a locally based NGO, and the LRC, the community’s legal representatives. Seven categories were determined (A - G), including:

- *Category A* – Members who were directly dispossessed of land rights, including: (i) the land owners who lost their right to the commonage, as well use of the commonage; (ii) the Anglican church; (iii) the tenants and occupiers who were dispossessed of occupancy and other use rights to the land.
- *Category B* – Members who are currently residing in Covie.
- *Category C* – Members who lived in Covie, but who moved from the area due to other circumstances and not as a result of apartheid laws and practices.
- *Category D* – Land-owning families
- *Category E* – Direct descendants of categories A and B
- *Category F* – People who, on the basis of their skills, capacity and willingness, make a meaningful difference in the development of Covie and the community.

⁶⁹ Personal communication with Angela Conway, SCLC, George, on 22 October 2010.

⁷⁰ Unpublished report, Southern Cape Land claims commission, Undated.

⁷¹ Personal communication with John Pedro, former Covie community member and claimant, on 23 October 2010.

- *Category G* – Any previously disadvantaged individuals from the surrounding communities who wish to live in Covie and will contribute to the development of the area⁷².

In 2004 the community decided that a CPA would be established to administer ownership of the land once transferred, and a Memorandum of Understanding (MOU) was drawn up (Conway and Xipu 2010). The signatories constituted the Covie Steering Committee, which was tasked with “ensuring the co-ordination of the activities of the parties for the purpose of achieving the objectives of the MOU”⁷³. The next step was to put the MOU into practice; through securing a grant from the CRLR, a service provider was appointed to draw up a development (Conway and Xipu 2010).

To date, the Covie land claim has not been finalised and the projected target for settling this claim is unclear. The delay can be attributed to the fact that this community decided on ensuring that the necessary plans and institutional arrangements (i.e. post-settlement support) were in place prior to transfer of the land (Conway & Xipu 2010). Many examples are available of restitution cases where settlement was opted for prior to establishing the necessary post-settlement arrangements; these have resulted in conflict and failure and have left the affected communities without the benefits that they had hoped to secure. As highlighted in *Chapter Four*, the LRP is painstakingly slow, and the inclusion of detailed post-settlement support in its initial stages could result in delaying the process. Furthermore, land claims involve complex issues related to natural resources; in this case, the unresolved issue regarding the commonage, which was incorporated into the TNP, will have an impact on how the land claim process takes place, as such issues cannot be overlooked.

5.7 GOVERNANCE SYSTEMS AND PROCESSES AFFECTING ACCESS

5.7.1 Policy and legislation relevant to the TNP: *Status quo*

The TNP is South Africa’s oldest national park and the first marine park to be established on the continent (Robinson & De Graaff 1994). SANParks is the managing authority of TNP and various policies and laws give effect to its mandate. While various national legislation and international soft law instruments (i.e. international conventions, non-binding guidelines, declarations etc.) apply to the legal regulation of protected areas such as the TNP, the establishment of these areas has become closely linked to the conservation of biological diversity as required by the CBD and to achieving the United Nations MDGs (Strydom 2009). In this regard, South Africa is committed to meeting these MDGs, as well as other targets including the CBD biodiversity objectives and those committed to at the 2002 WSSD held in Johannesburg (DEAT 2006). The compilation of the recent 2011 National Biodiversity Assessment (NBA) is an output of the country’s national and international obligations

⁷² Categories from an unpublished document: Covie Interim Constitution 2004.

⁷³ Unpublished report, Southern Cape Land Claims Commission, undated.

towards biodiversity and conservation planning. The NBA assesses the state of South Africa's biodiversity and ecosystems across terrestrial, freshwater, estuarine and marine environments (Driver *et al.* 2012). A key objective is to inform revision and update key national biodiversity policies and strategies, including the National Biodiversity strategy, the Biodiversity Framework and the National Protected Area Expansion Strategy (Driver *et al.* 2012).

South Africa's current policy framework, which has bearing on protected areas, is largely based and built on the work done by the world conservation union, the International Union for Conservation of Nature (IUCN). The IUCN defines a protected area as an "area of land and/or sea especially dedicated to the protection and maintenance of biological diversity and of natural and associated cultural resources and managed through legal or other effective means" (IUCN 1994). It sets out a list of guidelines and aims to link the various categories to management objectives for each area, as contained in the relevant domestic legal instrument (Strydom 2009). The guidelines set out the following categories for protected areas (IUCN 1994):

- *Category 1:* Strict nature reserve/wilderness area: managed mainly for science and wilderness protection;
- *Category 2:* National park: area managed mainly for ecosystem protection and recreation. This area would therefore be defined as a "natural area of land and/or sea, designated to: (i) protect the ecological integrity of one or more ecosystems for present and future generations; (ii) exclude exploitation or occupation inimical to the purposes of designation of the area; and (iii) provide a foundation for spiritual, scientific, educational, recreational and visitor opportunities, all of which must be environmentally and culturally compatible.";
- *Category 3:* Natural monument area managed mainly for conservation of specific natural features;
- *Category 4:* Habitat/species management area managed mainly for conservation through management intervention;
- *Category 5:* Protected landscape/seascape area managed mainly for landscape/ seascape conservation and recreation;
- *Category 6:* Resource protected area managed mainly for the sustainable use of natural resources.

As South Africa is signatory to the CBD, as well as a range of other legislative tools that promote the maintenance of biological diversity, its local legislation is underwritten by these commitments. Legislation therefore that has bearing on protected areas includes the Constitution (Section 24), NEMA (No. 107 of 1998), NEM: BA (No. 10 of 2004) and NEM: PAA (No. 57 of 2003), among others. Notwithstanding, the international obligations as well as other national legislation, protected areas are mainly regulated by the NEM: PAA, and its main objective is to provide for the declaration

and management of protected areas (Strydom 2009; Watts & Faasen 2009). The Act defines ‘management’ as the “control, protection, conservation, maintenance and rehabilitation of protected areas with due regard to the use and extraction of biological resources, community-based practices and benefit sharing activities in the area consistent with the biodiversity”⁷⁴. The act is a form of implementation legislation that links Section 24 of the Constitution and should be read in conjunction with the applicable provisions of the other national policies highlighted above, including that of the NEMA (107 of 1998). In the event that conflict should arise between the NEM: PAA and any other national legislation, this will be resolved in favour of the former (Strydom 2009).

The PAA makes the distinction between different areas according to their protection status, with emphasis on the following categories:

- Special nature reserves;
- National parks;
- Nature reserves and protected environments;
- World heritage sites;
- MPAs;
- Specially protected forest areas;
- Forest nature reserves and forest wilderness areas;
- Mountain catchment areas.

Before a prospective area can be declared as protected, it should follow a consultative process appropriate to the context and should occur within the principles outlined in the Constitution. The management of these areas is undertaken by any organ of state or organisation to which the Minister has assigned powers (Strydom 2009). In the case of TNP, that authority is vested in SANParks and the development of management plans for such areas is a prerequisite outlined in the NEM: PAA. This aspect of management will be discussed in *Chapter Seven*, where research results from the Covie case study are presented. The role of management, as highlighted in the preliminary conceptual framework forms part of the governance systems affecting access and certain processes (including consultation) and institutional arrangements should be clarified as part of management objectives and processes.

5.8 SUMMARY

This chapter has served to present a detailed background of the case study areas. The historical events at Ebenhaeser and Covie demonstrate the experiences of communities who suffered dispossession, discrimination, loss of rights, use and access to natural resources, and the accompanied hardship. The

⁷⁴ National Environmental Management: Protected Areas Act (57 of 2003, Chapter 1(1)).

main motivation for presenting the historical background was to situate these events in relation to past and current distribution and use of access to natural resources. By presenting this information, it is hoped that this will facilitate a better understanding of the current context in relation to access to fisheries resources in the case study areas. With South Africa's turbulent past, under colonial occupation and later, various measures introduced to marginalise and further alienate people of colour from their land had a profound impact on access to the use and management of natural resources. In this chapter, contemporary information on the case studies was presented, including socio-economic information, current livelihood activities, and the role of access to fisheries resources at each site. Context in terms of the policy and legal framework applicable to the management of estuarine systems (Olifants River estuary, Ebenhaeser) and MPA's (TNP, Covie) in South Africa was provided to demonstrate the socio-political context that has shaped and had bearing on access at the case study sites. Lastly, the information presented here serves as a crucial background for understanding of the research results and outcomes presented in the chapters that follow.

CHAPTER SIX

ACCESS TO FISHERIES RESOURCES AT THE OLIFANTS ESTUARY: RESEARCH RESULTS

6.1 INTRODUCTION

Drawing on the preliminary access framework presented in *Chapter Three*, the findings from the Ebenhaeser case study are presented here. The preliminary conceptual framework draws on the access analysis framework developed by Ribot and Peluso (2003), ideas from Sen's work (1981) on entitlements and capabilities, as well as theoretical ideas underpinning the notion of governance (Jentoft 2008; Kooiman & Bavinck 2005; Ostrom 2005). The first part of the chapter focuses on processes related to the governance system, more specifically policy and planning processes that have a bearing on access. In particular, information regarding the processes and outcomes of an estuary management planning process at the Olifants River estuary, as well as the recent promulgation of the SSFP, and a description of the land claim process will be presented. The focus here is on how these governance processes have, and continue to, influence issues of access.

The development of the Olifants Estuary Management Plan (OEMP) over the period 2007 - 2012, has been met with objections from the Ebenhaeser fishers and broader community. The interactions between different stakeholders regarding the development and finalisation of the OEMP, as well as the specific outcomes of these processes, were observed and documented during the fieldwork stages of this study. The influence of the SSFP on issues of access is explored, while it was being developed and once promulgated, together with the development of a community plan that has bearing on the finalisation of the land claim process.

The second part of the chapter focuses on presenting key mechanisms of access, both direct and indirect, for local resource users at the Ebenhaeser site. The presentation of findings follows the format presented in the preliminary conceptual framework (Figure 4, *Chapter Two*). By documenting these mechanisms, rich information, especially related to the history and cultural context of this fishery, are revealed.

6.2 GOVERNANCE PROCESSES AFFECTING ACCESS

Chapter Four traced and highlighted some of the earlier as well as contemporary governance systems and processes. Here, aspects associated with legislative reform were discussed together with key policies that have a bearing on access and fisheries governance in South Africa. The MLRA was emphasised as a key policy, but certain inequities within the policy resulted in contestations. Coupled to these contestations was the lack of clarity with regard to roles and responsibilities within the

institutions tasked with implementation. While these were initially identified as setbacks, it presented an opportunity for change. Therefore, the need for a paradigm shift within fisheries governance, especially small-scale fisheries, was recognised. The following section highlights some of the outcomes of these changes by focusing on the impact that these processes had at the Olifants River.

6.2.1 The development of the new SSFP: A paradigm shift and its relevance for access at the Olifants estuary

After democratisation, one of the key policy changes in fisheries was the introduction of the MLRA (1998). This change signalled an intention to transform the industry, and was aimed at addressing racial inequalities in the sector. It therefore had objectives to deliver greater access to fisheries resources, especially for the poor and marginalised (Isaacs 2006; Sowman 2006). In practice, however, despite the rhetoric, there was limited broadening of access to historically disadvantaged groups (Isaacs 2006; Van Sittert *et al.* 2006). The targeted groups, namely those traditional fishers who depend on marine resources for food and livelihoods, remained a neglected sector (Sowman 2006). Their dissatisfaction with the fisheries governance regime led to a range of protests, public hearings and finally legal action that set in motion a requirement to develop a new SSFP. This process bears witness to the contestation occurring within the fisheries sector in South Africa (Isaacs 2006; MDT 2003; Sunde 2003).

Although the policy development process was largely driven by the national and technical task teams responsible for drafting the policy (*Chapter Four*), representatives of the Ebenhaeser fishing committee (the OVV) and broader community participated in various national and regional workshops that sought to obtain the views of the fishers regarding issues that required policy attention. Exposure to the ideas discussed at these meetings, as well the opportunity to provide input to the policy process, began influencing the way in which Ebenhaeser fishers framed their claims to access estuarine resources and their responses to the OEMP (discussed in section 6.2.2 below).

Sowman *et al.* (2011) note that the process of formulating the new policy, as well as the principles and approaches guiding it and a number of provisions contained therein, suggests a fundamental paradigm shift in the governance of small-scale fisheries in South Africa. After five years of development the policy was finalised in June 2012. In its introduction, the policy stresses that it “aims to provide redress and recognition to the rights of small-scale fisher communities in South Africa previously marginalised and discriminated against in terms of racially exclusionary laws and policies, individualised permit-based systems of resource allocation and insensitive impositions of conservation-driven regulation. In line with the broader agenda of the transformation of the fishing sector, this policy provides the framework for the promotion of the rights of these fishers in order to fulfil the constitutional promise of ‘substantive equality’” (DAFF 2012). It continues by referring to

South Africa's obligations in terms of the African Charter on Human and People's Rights, and states that the policy aims to "adopt legislative and other measures' to give effect to the rights enshrined in the Charter" (DAFF 2012). Therefore, the call for the realisation of human rights is a recurring theme in the policy; this requires certain fundamental shifts in the government's stance towards the small-scale fisheries sector (Sowman *et al.*, 2011). This shift in position can be observed from principles guiding the policy which include amongst others; recognition of rights guaranteed by custom and law and access to and use of natural resources on a communal basis to the extent that these are consistent with the country's Bill of Rights, incorporation of a community based rights approach to the allocation of marine resources, promoting effective participation in policy development, management and decision-making, recognising approaches that will contribute to poverty alleviation and ensure that small-scale fishing communities are not denied physical access to infrastructure and amenities that are central to exercising their rights to fish (DAFF 2012). These principles as well as strategic policy objectives aim to give impetus to the developmental and human rights-based approach of the policy (DAFF 2012: Section 3)

In keeping with the Equality Court ruling (referred to in *Chapter Four*), the new policy refers to the need to "take into account international and national legal obligations and policy directives to accommodate the socio-economic rights of these fishers to ensure equitable access to marine resources", and draws on principles and statements contained in a number of key international instruments (Sowman *et al.*, 2011). These include the UN FAO Code of Conduct for Responsible Fisheries (1995), the CBD and its associated Programmes of Work, as well as the Bangkok Statement (FAO 2008). A key shift from previous fisheries policies is that the new SSFP recognises the rights and needs of small-scale fishers and affords them respect and legal protection. It places emphasis on the important role that small-scale fisheries play in food security and sustaining livelihoods of many poor fisher and/or coastal communities who depend on fishing (whether part-or full time) as a source of food and livelihood. Key, here, is also the recognition of the role that fisheries play as a safety net where households may not have access to land or other assets, or during times when communities are vulnerable to environmental or economic shocks. Therefore, the approach to small-scale fisheries governance that the policy advocates is in line with international trends and key instruments that recognise the importance of small-scale fishing to livelihoods, poverty reduction, food security, employment and local economic development (Béné 2006; FAO 2005).

In terms of its management approach, the policy emphasises a significant shift away from past management approaches, which were characterised by technocratic, science-based and top-down decision processes, to one that advocates an holistic, integrated and participatory approach based on human-rights principles (DAFF 2012; Sowman *et al.*, 2011). The mechanisms, structures and processes to enable this shift were highlighted in *Chapter Four*. Of particular relevance to issues of access are the criteria provided, which include fishers demonstrating long involvement with fishing,

confirming dependency on fishing, and not holding permanent employment. These have all been listed, among others, as key criteria in accessing fisheries resources.

As the responsible authority for fisheries resources, DAFF is tasked with issuing rights to access fish and, where appropriate, a community-based legal entity and the fishing community determines the manner in which the rights are allocated (DAFF 2012). In the Ebenhaeser case, this arrangement is in place, with the local fisher committee nominating fishers and allocating exemption permits granted by DAFF. These arrangements are discussed further in section 6.3.1, where formal mechanisms of access are highlighted. The policy advocates that each fishing community will be required to establish a local co-management structure and work with government to manage local resources. These provisions reinforce the key focus of governance, which is to encourage interactions across relevant governance actors. The proposed devolution of decision-making powers to local-level institutions through the community entity and the co-management structure suggest that the powers of the managing authorities are being devolved to local resource users and thus give effect to the principles of policy (LRC 2012). Having the power to make decisions at local level regarding who gains access to resources is desirable, as community members are able to identify or know who the *bona fide* fishers are (Sowman *et al.*, 2011). This also means that those requiring preferential access will be identified by their local structures. Therefore, where needs and rights change, people may be accommodated as their circumstances change. This flexibility is favourable in poor communities where employment opportunities are erratic, often part-time or seasonal. With regard to local governance, it encourages the development of representative local institutions to facilitate user participation in management decisions.

At the Olifants River estuary, evolving and changing governance processes have resulted in the governance system being in a state of flux. In particular, the SSFP process has been a key factor that has enabled local resource users and their partners to challenge the *status quo* and highlight their claims to customary practices and livelihood needs, in relation to future plans and management proposals for the estuary, as well as aspects associated with the land claim. These processes have had a bearing on how access is being viewed and negotiated by the various governance actors.

6.2.2 Management: The Olifants Estuary Management Plan (OEMP)

As highlighted earlier, the Olifants River estuary is regarded as one of the most important in the country in terms of conservation value, and is one of four permanently open estuaries on the West Coast of South Africa (Whitfield 2000). The area has also seen little development compared with other estuarine areas; therefore, from a conservation perspective, it presented an opportunity for proactive planning in terms of forming a vision for the estuary and setting in place a management strategy that would realise that vision (AEC 2008). In 2007, the former Department of Environmental

Affairs and Tourism (DEAT) fisheries management branch, Marine and Coastal Management (MCM), embarked on a process of planning for the future of the Olifants River estuary. This planning process, which takes its cue from the ICMA, aimed to bring all relevant stakeholders involved in the use and management of the estuary together, in order to plan for the future protection of the estuary. MCM entered into partnership with the C.A.P.E (Cape Action for People and the Environment) Regional Estuarine Management Programme and contracted an environmental consultancy, Anchor Environmental Consultants (AEC) (based in Cape Town) to prepare a situational analysis and develop a management plan for the estuary.

As outlined in the ICMA, which emphasises interaction with all relevant stakeholders as the point of departure for estuary planning, the first consultative meeting between the various stakeholders was scheduled in January 2008⁷⁵. This purposes of this first and very important meeting was to begin discussing and mapping the vision that would inform future management of the estuary. Several stakeholders in the area were invited to this meeting; however, the local fishing community of Ebenhaeser was not directly informed about the meeting. The researcher, however, received notification of this meeting a day prior to the actual meeting date and contacted the OVV and enquired whether they were aware of the meeting. According to the chairperson and some other committee members, they were not aware of the OEMP process or the scheduled meeting. Despite the late notice, three members of the fishing committee, together with the researcher, attended the first meeting held in Strandfontein, approximately 20 km from Ebenhaeser. The first meeting was devoted to introducing the C.A.P.E programme, the rationale for developing the management plan, as well as outlining of the tasks that the consultants proposed for drafting the plan. At this first meeting, the consultants, with participation from the various stakeholders, developed a vision for the Olifants River estuary, stating: “The Olifants estuary is a sanctuary for wildlife and visitors, it should bring economic benefits to the local community through sustainable use of natural resources and responsible ecotourism, and should benefit all South Africans through conservation of biodiversity and ecosystem function” (AEC 2008). During the meeting the representatives from the fisher committee informed the meeting that they were not comfortable with the process, as they had no mandate from the broader community and could not support the proposed vision emanating from the group. Furthermore, from the fishers’ perspective, the vision highlighted above was not an appropriate one for the estuary, as it mentioned that the estuary is an area for wildlife and visitors, which reduces their access to the river to derive economic benefits⁷⁶. These objections were noted by the OVV, who believed the consultants should be made aware of them when the process of providing public comments commenced.

⁷⁵ Section 34(1)(a) states that the responsible body developing the management plan must embark a public participation process.

⁷⁶ Interview with Pieter Cloete, former OVV Chairperson, at Olifantsdrift, Ebenhaeser on 10 November 2009.

After the first meeting the consultants developed a draft management plan, referred to as the Olifants Estuary Draft Management Plan (AEC 2008). This plan was circulated to all relevant stakeholders for comment, with the medium being English, as it was not initially available in Afrikaans (the local language of many stakeholders of the Olifants valley and the fishing community). This made reading and commenting on the plan somewhat difficult, especially for the Ebenhaeser community. The plan put forward two main proposals that suggested far-reaching implications for local resource users: the first stated that at least 50% of the estuary should be declared an MPA; and the second, that a Forum be established (comprising representatives of stakeholders) to oversee the implementation of the management plan (AEC 2008). The Ebenhaeser community, however, had several concerns about the process and the draft plan and, with support from the EEU, provided their comments. The first of these comments included the fact that the process of developing this plan did not acknowledge and include all relevant stakeholders; in particular, the fishers represented by the OVV and the *Ebenhaeser Grondeis Komitee* (Ebenhaeser Land Claim Committee). At the OEMP's initiation, fishers and the OVV have been obstinate in voicing their opinions through strong letters addressed to authorities at ministerial level. In relation to greater participation in the process of the OEMP, a letter dated 14 November 2008, written by the community was sent to the former minister of DEAT , stating:

- “The community needs to participate equally in the planning process and their status as land owners must be recognised.
- Any arrangements that are set up for the joint administration and management of the area in the future must respect these rights. The new Integrated Coastal Management Act might provide a way of ensuring that the rights of the community are respected, enable certain protective measures to be put in place, while simultaneously providing the institutional arrangements that ensure that all levels of government are involved and supportive of local level partnerships.”⁷⁷

After the letter was sent to the Minister in 2008, several meetings took place between representatives of the former DEAT, the consultants who drafted the plan, other stakeholders (various local government departments, municipal authorities, surrounding land owners and people with interest in the area) and representatives from the Ebenhaeser fishing community. These meetings proved challenging, with the fishers and communities' fears about the process being reinforced, with evident mistrust and tensions. These conditions were further fuelled when reference was made by the fisher community of their role for greater participation in the process. Responses documented by the

⁷⁷ Olifants Estuary Management Process, Unpublished information pamphlet produced for the Ebenhaeser community by MDT, the EEU and the LRC, December 2008.

researcher during meetings emphasised that “no special people are involved in these processes”⁷⁸. In meetings between management and the local OVV dating back to 2007 (before the initiation of the management plan), these sentiments and prioritisation of management objectives were evident, with senior management officials commenting that the “national fish stock benefits far outweigh the local benefits”⁷⁹.

These tensions and differences in terms of management objectives and approaches have been a key factor hampering the development of creative management measures, or agreement on how to move forward in terms of managing the estuary. Community representatives have stressed at several meetings that they are not against protecting the estuary, and therefore not against any formal management processes; however, they fear that their historical as well as current customary practices to the land and the fisheries resources are not being acknowledged⁸⁰. The OVV have acknowledged that they are aware that this plan could afford protection for the estuary, especially from holiday-makers, who at times do not adhere to rules and regulations⁸¹. The presence of some holiday-makers in the area has resulted in many fishers lodging their grievances to the compliance officer as well as management authorities, especially in the event that their nets are wrecked as a result of speed-boats or the sheer disregard for rules governing the estuary. Additionally, with the constraints of two compliance officers covering an area of approximately 300 km, which include the coastline and estuarine environment, the development of this plan has been welcomed. As noted by one compliance officer:

“Hierdie plan sal ons help en bemagtig met die nodige wetgewing om seker te maak dat diegene wat nie die wet volg nie, verantwoordelik gehou kan word. Dit kan help met wetstoepassing.” (This plan will help and empower us with the necessary law to help ensure that those who disregard the law can be held accountable⁸².)

At several community meetings held after the draft OEMP was released, requests were made by the OVV and community that a legitimate process should be followed, where the community would be involved in the drafting of the management plan. Their requests were based on their belief that they

⁷⁸ This verbatim comment is based on the researcher’s own observations and was captured during a meeting in December 2009. This response was made by one of the authors of the management plan when fishers spoke about their historical rights to resources and the area, and they were informed that no special attention would be afforded to any specific stakeholder group.

⁷⁹ Verbatim comment by a senior scientist from MCM during a meeting held between the OVV, MCM and researchers from the EEU in September 2007.

⁸⁰ Comment provided by former OVV Chairperson, Pieter Cloete at a management meeting with the consultants who drafted the management plan, 1 September 2008, at the University of Cape Town.

⁸¹ Interview with Sylvester Donn, chairperson of the OVV, at Olifantsdrift, Ebenhaeser, 12 January 2011.

⁸² Interview with compliance officer, Peter Horne, at Doringbaai on 26 November 2010.

did not regard themselves just as another stakeholder group, but rather as rights holders with a long history of harvesting resources in the area. They believed that they had a responsibility towards the estuary and its resources, and should therefore be involved in matters affecting it⁸³. Secondly, the community stressed that they believed that the OEMP process should consider the principles that were being articulated in the process of developing the SSFP, as well as the land claims process which, when finalised, would see the Ebenhaeser community take ownership of much of the land surrounding the estuary. These two processes are very important as they recognise the historical rights of the Ebenhaeser community to their land and natural resources, on which many community members depend for their livelihoods⁸⁴. Upon receiving these comments, the consultants agreed to meet separately with the OVV to discuss these concerns.

As the researcher had previously been involved with other fishery-related projects with the community, she was able to be present at these meetings and to observe and document the process as it unfolded. Meetings⁸⁵ with the consultants were difficult, with the biggest stumbling block being the continued reference to a directive from MCM calling for the phasing out of gill-net fishing in the estuary by 2014⁸⁶. The consultants, therefore, proposed that specific zones be agreed upon where the fishers could continue to fish until 2014 with efforts in the meantime to explore alternative livelihood options. However, the zones that were proposed by the consultants were not traditional fishing areas, nor were they accessible to the fishers; therefore, consensus on the consultants' proposal could not be reached. Moreover, as the 'phasing out' debate has been an area of continued tension between the fishers and MCM, the representatives of the OVV present at the meeting with the consultants were still worried that the plan did not adequately address their concerns or recognise their rights. Furthermore, the lack of recognition of their rights and livelihood needs led to further mistrust of the consultants and the authorities, and refusal to adopt the plan. In particular, uncertainty about the impact of zonation and what this might imply for their current and future livelihoods saw reluctance on the part of the OVV and fishers to agree on any suggestions put forward by the consultants. At a meeting held in Cape Town at the MCM offices in December 2009, representatives of the OVV reiterated their concerns and sentiments about the plan, adding that the fishers felt uncertain about the proposed plan and proposals.

⁸³ Comment provided by Paul Miggel, a fisher, at a community meeting at Olifantsdrift on 13 December 2010.

⁸⁴ Olifants Estuary Management Process, Unpublished information pamphlet produced for the Ebenhaeser community by MDT, EEU and LRC: December 2008.

⁸⁵ Notes and minutes taken by researcher of meeting held in September 2008 at Ebenhaeser town hall between AEC and Ebenhaeser community.

⁸⁶ This directive is based on a policy devised by MCM in 2003 to eliminate commercial fishing in South African estuaries, but giving the Olifants estuary a period of 10 years to phase out gill-net fishing (AEC 2008).

During the period 2009 - 2010, there was limited progress in terms of finalising the OEMP and communication occurred largely between the communities' legal representatives, the consultants, management authorities, the OVV and other research partners involved in the process. The focus of these discussions was on how the rights of the fishers and their livelihood needs could be accommodated within a conservation framework for the estuary. While the fishers were supportive of several objectives and management proposals put forward in the OEMP, especially those that addressed pollution and sought to enhance water quality and river flow, they would not support the proposals for the management of the fishery and issues surrounding access to estuarine land and resources. The former chairperson of the OVV added that fishers were not opposed to laws or new policies, but that they wanted to be included, participate in and help draft management proposals for the estuary, as they felt that *“in die plan word ons nie bemagtig nie, die sportman trek voordeel”* (in the plan we are not empowered and the recreational fisher benefits⁸⁷.)

A further development was the pressure from C.A.P.E. and DEAT to establish an Estuary Forum to implement the OEMP. This forum is a key institutional body tasked with driving the management process, as well as the implementation of the OEMP's objectives. At the first stakeholder meeting, the fisher representatives objected to the establishment of the forum and requested that this process be delayed until such a time that issues related to their main concerns were addressed, as they did not believe that the OEMP's initiation followed a legitimate, consultative process and, therefore, that the establishment of a forum would be premature⁸⁸. However, after several meetings held with the local fisher representatives and other stakeholders, it was decided that an 'Interim Forum' would be established and the chairperson of the OVV was elected as a co-chairperson to serve on this forum. It was also decided that matters raised by the fisher community and their representatives about the OEMP process would be discussed and addressed simultaneously by this body. As this forum included stakeholders from various national and local government departments, as well as municipal structures, these stakeholders were briefed and tasked with addressing issues related to the management of the estuary. This has significantly changed the dynamics of the governance processes as greater community participation and representation have been acknowledged by stakeholders and fishers and their representatives are now included in meetings.

6.2.3 The Community Development Land Acquisition Plan (CDLAP)

It was highlighted that the Ebenhaeser community has been involved in a lengthy land claim process initiated in 1996. Key aspects associated with the finalisation of the claim emphasise that (EcoAfrica 2012):

⁸⁷ Pieter Cloete, former OVV chairperson, quoted from minutes of a meeting held in Cape Town at MCM offices on 15 December 2009.

⁸⁸ Interview with former OVV chairperson, Pieter Cloete, on 22 October 2009 at Olifantsdrift, Ebenhaeser.

- The land claim stemming from a land-swapping arrangement undertaken in 1925 resulted in the dispossession of land that became part of an irrigation scheme focused on poor white people at the time;
- A tenure reform process in which the future ownership and management of the land that they live on is to be adjusted, with the aim of strengthening their tenure on the land.

As part of finalising the settlement, a process has been embarked upon to develop a Community Development Land Acquisition Plan (CDLAP) that, *inter alia*, would guide any future planning to address the two aspects highlighted above. The aspect of tenure reform is especially important as this impacts on issues of rights as well as how local community members, the state and other stakeholders view the rights of the Ebenhaeser community; not only to the land, but to natural resources in particular. The CDLAP process was initiated in 2012 and is likely to be finalised at the end of 2013. A consultancy, EcoAfrica, based in Cape Town, was appointed and tasked with development of the CDLAP. Various stakeholders identified and included in the process are:

- Primary Members: (i) Ebenhaeser Claimant Community; (ii) Ludzville Land Forum; (iii) Regional Land Claims Commission – Western Cape.
- Secondary Members: (i) The Department of Rural Development and Land Reform, Land Reform and Rural Infrastructure Development branches; (ii) Department (Provincial) of Agriculture; (iii) Department of Water Affairs; (iv) Ludzville Winery; (v) Matzikama Municipality; (vi) Department of Human Settlements; (vii) Agri Wes-Kaap; (viii) Legal Resources Centre (EcoAfrica 2012).

As the CDLAP aims to identify how best to finalise the land claim and what post-settlement options could benefit the community, the process has been undertaken in close consultation with the community (EcoAfrica 2012). Aspects associated with the estuary and fishing activities, as well as how fishers' current rights to fisheries resources can be further enhanced, have been included in the development of the plan. Various meetings with the fishers have been held to ensure their participation in the process⁸⁹, and workshops have been held to identify options, including fish-farming and investing in cold-storage facilities, to enhance livelihood activities associated with fishing. If successfully implemented, these options may further enhance mechanisms for deriving benefits from access at the Olifants River. The section below describes the mechanisms drawn on to benefit from, and maintain, access at the Olifants River.

⁸⁹ Comment provided by OVV chairperson, Salvester Donn at a CDLAP meeting held at Ebenhaeser, 3 June 2012.

6.3 DIRECT MECHANISMS OF ACCESS AT THE OLIFANTS RIVER

In the framework presented by Ribot and Peluso (2003), access mechanisms are highlighted as comprising direct and indirect mechanisms that individuals are able to draw on in order to access and derive benefits from natural resources. As highlighted in *Chapter Two*, the most direct measures which individuals draw on in order to benefit involves having rights to resources, whether these are formally recognised or not. In the preliminary conceptual framework, rights are therefore outlined as formal or legal rights and ‘informal’ rights, the latter characterised as being based on claims to customary practices, which may be viewed as ‘poaching’ or theft within the formal legal framework. The term ‘informal’ is used here in relation to customary claims for access to fisheries resources; in this instance, based on strong reference to customary practices, although it may not be recognised by the formal legal system. While a living customary system is not formally recognised, historical narratives to customary practices are drawn on to substantiate contemporary access practices; those viewed as legal and activities deemed as ‘illegal’ or poaching. In their framework, Ribot and Peluso (2003) emphasise the need to analyse these mechanisms of access, as well as other indirect mechanisms that are usually context-specific and determined empirically.

Through fieldwork undertaken to establish what mechanisms fishers and the community draw on to gain access to resources, and how these come about, the following sections present these in relation to the preliminary conceptual framework highlighted in *Chapter Three*. This preliminary conceptual framework draws on the access analysis framework provided by Ribot and Peluso (2003) and the theoretical underpinnings guiding the study. However, as access retains an empirical focus (*who* uses *what?*, *in which ways?* and *when?*) it is critically important to explore the abilities that people draw on in order to benefit not only in material terms, but also in terms of benefits that are not easily quantifiable. In Ribot and Peluso’s (2003) framework, the role of formal rights is highlighted and recognised as a mechanism of access. The right to harvest fisheries resources at the Olifants River estuary is a regulated activity; therefore, formal rights are acknowledged by the state and the fishers. These formal rights allow the Ebenhaeser fishers to harvest *L. richardsonii* (or harders) at the estuary. While the role of formal rights is relevant and important for access in this particular case, other factors associated with claims, that may be equally important for accessing fisheries resources, are discussed. These aspects are related to claims regarding customary use and practices, and how people draw on these narratives to substantiate their access claims in order to gain and maintain access. These customary claims, as this study reveals, are fundamental and intertwined with resource use, culture and identity, and are therefore relevant and impact on formal access rights. The chapter then moves on to present indirect mechanisms of access and, by applying the preliminary conceptual framework, the results have revealed that in some cases there is a strong emphasis on certain mechanisms, and an overlap between such mechanisms is relevant. At the Ebenhaeser site, emphasis was placed access to

knowledge, identity and culture, social relations and engagement in networks. These mechanisms and others are discussed in the forthcoming sections.

6.3.1 The role of formal rights

At the Olifants estuary, in terms of ‘legal’ rights, there are currently 45 exemption permit holders who are allowed to exploit *L. richardsonii*, and each permit holder is allowed one crew member. Therefore, in practice, 90 fishers are legally able to have access. These permits are referred to as exemption permits as they are not long-term rights, but renewed annually, and the fishers are not required to pay a fee for these. The management and allocation of these permits are administered by the Fisheries Branch of DAFF, but it is left up to the discretion of the local OVV to consult with the community and fishers and internally establish who should be awarded permits⁹⁰. The issue of transferability is also left up to the discretion of the OVV and its members, but in the event that a fisher passes away or is too old to utilise his permit, the process is that the permit would remain within the fisher household where it was initially issued. The committee therefore tries to establish if anyone within the household could or wanted to take up the permit and, if this is not the case, the allocation goes back to the committee to decide to whom it should be allocated. In the event that a community member approaches the committee to take up an available permit, the committee will discuss this, look at the person’s capabilities and household situation, and then collectively take a decision. At several meetings, committee members have stressed that exemption permits should be awarded to *bona fide* fishers, especially those who are unable to go to sea or secure alternative employment, or those in households where there is a visible need and dependence on fishing for income and household consumption⁹¹.

The number of permits allocated for this fishery has fluctuated over the past 50 years. During the 1990’s, 65 permits were allocated and the former provincial management authority, Cape Nature Conservation (CNC), was responsible for law enforcement (Sowman 2003). While decisions about rights allocation and management occurred in a haphazard way prior to 1994, decision-making regarding the use and regulation of the estuary was based largely on the conservation officers’ opinion of the biological sustainability of the resource (Sowman 2003). However, with the transition to democracy in South Africa and the promulgation of the MLRA (1998), a new management agency, MCM, was established and assigned with the duty of management and compliance of fisheries resources. It was therefore just after the promulgation of the MLRA in 1998 that the number of permits for the Olifants River fishery was reduced to 45. The motivation put forward for wanting to

⁹⁰ Interview with former OVV Chairperson, Pieter Cloete, at Olifantsdrift, Ebenhaeser on 10 November 2009.

⁹¹ During her six-year involvement with the community, the researcher has been present at several committee meetings where conditions for exemption permit allocation have been discussed, as well as how criteria are determined for identifying exemption permit holders.

reduce the number of permits was that the main target species, *L. richardsonii* (harders), was over-exploited and, as estuaries provide nursery areas for many line-fish stocks, efforts to reduce the number of juvenile line-fish caught by gill-nets could be minimised if gill-net activities and effort in the estuary were reduced (Hutchings & Lambert 2002). Discussions between the fisher community and management authorities took place and plans for future management, including issues of access, were negotiated. Based on these discussions and agreements, it was decided that the number of gill-net permits would be reduced to 45 (Sowman 2011). The new permits came with conditions including restrictions on net length, type and mesh size, among others. Other conditions included a list of prohibited species, mostly over-exploited line-fish species. Defined as ‘bycatch’, when these species are caught by fishers, such instances should be reported and handed over to the compliance officer. It was also agreed that each permit holder would be allowed to work with a ‘*bakkie maat*’ (another fisher or crew member). This *status quo* has remained in place since early 2000; thus, 90 ‘legal’ fishers are currently accommodated in the fishery where they are allowed to fish for harders and consume and/or sell the catch.

6.3.2 ‘Informal’ rights based on customary and historical use practices

While the current fishery at the Olifants River estuary is regulated, historically, it appears that customary rights to fishing on the river went uncontested during the 1800’s and 1900’s, when processes related to resettlement and removals were being initiated. In *Chapter Five*, it was highlighted that the promotion of fishing and access to the Olifants estuary were used as a selling point when trying to persuade the inhabitants of Ebenezer and Doornkraal to move. Little reference to fishing rights are made prior to the 1925 ‘land exchange’ that took place, but from Commissions held during the early 1920’s resolutions put to the residents during this time contained proposed settlement arrangements which, among other things, stated: “the Hottentots to get fishing rights at Oliphant’s Drift and right of way to the drift”⁹². From these commissions, there was evidence presented by many local inhabitants about their livelihoods and the activities that they engaged in to make a living, which also emphasised their customary rights to land and resources. Some of these statements made by local inhabitants (all male) included:

Cornelius Donn – “I am the nephew of Piet Manel. I have always lived here and claim my rights to the ground here on account of my long residence here. I own a pandokkie and have eight donkeys. My occupation is that of a fisherman. A plot of ground was granted to me, which I sow.”

Julie Afrika – “Lived at Doornkraal. I possess four donkeys. My occupation is a fisherman.”

⁹² Meeting between the Minister of Land and the Coloured people at the Ebenezer Mission Station on 3 June 1921.

Hendrik Farau – “Father was an inhabitant at Doornkraal, who was born, lived and died here. Was not born here, 20 years of age, no ground, has a house, fisherman.”

Piet Oerson – “Admitted three years ago, when married to Griet Boois, grandmother was Magaretha Nero. Owns a house and three donkeys. Was granted land, occupation fisherman.”

(Ebenhaeser Claims Commission: Sitting No 10. Minutes of Evidence, 22 March 1920.)

During the interview process for the current research, many respondents made reference to their parents or grandparents and generations before them who had lived in the area. Making reference to these historical narratives, respondents believed that it entitled them as a community to access the fisheries resources of the Olifants River estuary and that their practices should be sustained for the benefit of the next generation⁹³. While the role of legal rights to access fisheries resources was acknowledged, some respondents believed that whether these were in place or not, that as a community living next to the resource, they were entitled to harvest fish⁹⁴. As this was a recurrent and important aspect in terms of to what respondents believed their history entitled them, it can be viewed as a mechanism fishers draw on to substantiate their access claims to resources. The researcher therefore spent time exploring fishers’ perceived ‘customary’ claims and how these were articulated by fishers and their communities.

During some of the focus group sessions, it was established that, historically, the fishers had their own set of local rules or norms that governed the fishery and these were known to the fishers and passed on by generations before them⁹⁵. Some of these local rules are discussed later in this chapter. From these interviews, respondents indicated that customary rules governing the fishery were known to fishers and that there was a protocol guiding fishing activities in the community. In many formal management meetings, fishers and community representatives had continuously been calling on authorities to recognise their history that is coupled to resource access in the estuary. At these meetings it was stressed on several occasions that, based on their historical links to fisheries resources and the area, fishers and the community believed they had a right to access resources and a responsibility to the future generation to sustain their fishing practices. While many fishers and

⁹³ Comment agreed upon by all fishers present during a focus group session at Nuwepos, Ebenhaeser, 22 October 2009. Present were Niklaas le Roux, Hendrik Galant, Jan Fortuin, Daniel van der Westhuizen, Frank Julies, Kevin Peters, Charl le Roux, ‘Oubaas’ Gertse, Dam Cupido and Patric le Roux.

⁹⁴ Interview with Paul Miggel, at Hopland, Ebenhaeser on 14 December 2010.

⁹⁵ The researcher together with a legal entity and NGO (LRC and MDT, respectively, both based in Cape Town), conducted oral history interviews with community members of Ebenhaeser and Papendorp in 2009. Some of the objectives of these interviews was to try and establish if there were customary rules governing the Olifants fishery and during this exercise the researchers were able to identify three local rules that were known the fishers and community.

community members alike reiterated these sentiments, one respondent summed these claims up by adding:

“Jy’s gebore langs die rivier, gedoop in die rivier en maak jou lewe uit die rivier.” (You were born next to the river, baptised in the river and you make a living from the river.⁹⁶)

6.3.3 ‘Informal’ rights – ‘Poaching’

In South Africa many customary and traditional systems were eroded during the apartheid era and replaced with formalised statutory controls, such as permit requirements, limitation on species harvested, and regulations governing the fishery, among others. Furthermore, as Hauck (2009) adds, after restructuring of the fishing industry post 1994, the allocation of rights to some fishers has deemed them ‘legal’, while others have been excluded and deemed ‘illegal’; therefore, the latter have been considered as ‘poachers’, which would see their activities being sanctioned through law-enforcement measures. At Ebenhaeser, the issue of ‘poaching’ (or rather where fishers engage in fishing without a permit), has been an issue that the fishers are aware of, but felt they did not have control over. At a focus group session⁹⁷ (mostly attended by fishers who had permits), the researcher asked the fishers how they felt about fishers who operate without a permit or a permit holder present. While the group agreed that they are unable to do anything, they responded that the compliance officer is responsible for such matters, but they felt that they could not intervene or speak out about this. ‘Oubaas’ Gertse⁹⁸, who was present, is one fisher who has does not have a permit. He responded that there is nothing that the fishers can do to him; they know he goes out alone or sometimes with one other person (also without a permit), but he’s not afraid of anyone saying anything. He will just go back; even if he is caught by the compliance officer, he will go again as he has no income and can’t go hungry. During this session, fishers acknowledged that they were aware that there are fishers that operate without a permit (or without a permit holder), and that there were fishers who take risks knowing that if they were caught by the compliance officer, they could be issued a fine of up to R2 500⁹⁹ and run the risk of having their nets confiscated. However, as alternative employment opportunities are limited to *ad hoc* or seasonal work on adjacent farms during peak harvesting times, others added that they could not possibly deny or report fishers who are only trying to provide for

⁹⁶ Interview with a fisher, Aggels Blakenberg at Olifantsdrift, Ebenhaeser on 21 October 2009.

⁹⁷ Focus group meeting with ten fishers from Nuwepos, Ebenhaeser on 22 October 2009. Present were Niklaas le Roux, Hendrik Galant, Jan Fortuin, Daniel van der Westhuizen, Frank Julies, Kevin Peters, Charl le Roux, ‘Oubaas’ Gertse, Dam Cupido and Patric le Roux

⁹⁸ Respondent present during focus group meeting with ten fishers from Nuwepos, Ebenhaeser on 22 October 2009. Present were Niklaas le Roux, Hendrik Galant, Jan Fortuin, Daniel van der Westhuizen, Frank Julies, Kevin Peters, Charl le Roux, ‘Oubaas’ Gertse, Dam Cupido and Patric le Roux.

⁹⁹ Approximately US\$315 based on a US\$1= ZAR8 exchange.

their households¹⁰⁰. This, some believed, was not in the spirit of goodwill, as everyone is trying to provide for their households and all members of the community are entitled to fish. The issue of ‘poaching’, therefore, was a topic that many fishers were divided on or not entirely sure how to respond to; this was evident from their comments as many felt that ‘resources should be used in a sustainable way, but that people are dependent on these for their livelihoods’¹⁰¹.

In Ribot and Peluso’s (2003) access framework, illegal access is therefore defined as the enjoyment of benefits, which is not sanctioned by state or society. While ‘poaching’ in the study’s context is not sanctioned by the state, in the Ebenhaeser case, the broader community and fishers themselves have divergent views on this practice. In this context, plurality within this fishery can be observed, as fishers acknowledge formal access rights and processes, but at the same time rationalise access practices, which are defined by the state as poaching and contradictory to the management approach. However, local communities substantiate these actions by adding that it is the community members’ right to fish.

The section on rights above has highlighted two significant aspects. The first is related to formal legal rights through permit allocations. While these rights are relevant to the fishers of Ebenhaeser, the issue of formal access rights has not seen calls by fishers for increasing the number of exemption permits or for these rights to be transformed into long-term rights. Rather, emphasis has been placed on recognising historical-use practices to the estuary and its resources and that the fisher community members have a claim to these, whether legally recognised or not. This has been apparent during various interviews and in responses made in terms of the management plan process, which was highlighted earlier.

6.4 INDIRECT MECHANISMS OF ACCESS AT THE OLIFANTS RIVER

The attention in this section turns to examine indirect mechanism, i.e. what other strategies, apart from rights, are harnessed to benefit from resources. By presenting the indirect mechanisms relevant at the Olifants River estuary, overlap in terms of what strengthens these and rights-based mechanisms reveal some similar motivations in certain cases. The indirect mechanisms employed include the mechanisms outlined in Ribot and Peluso’s (2003) access framework; but, as access retains an empirical focus, the emphasis here is to highlight what key indirect mechanisms are drawn on or may exert greater importance in order to benefit or make claims to gain and/or maintain access, as encountered at Ebenhaeser.

¹⁰⁰ Meeting with 8 fishers at Olifantsdrift, Ebenhaeser on 24 September 2009. Present: Kerneels Donn, Basil Afrika, Petro Donn, Dirk Afrika, Andries Smit, Cornelius Koordom, Martin Donn, Ralph Donn. Siena Don, a young woman, also present at meeting.

¹⁰¹ Interview with two fishers and brothers, Willem and Jacobus Cloete at Papendorp on 22 October 2009.

In the introductory chapter it was emphasised that it is important to understand the role of rights in resource access (whether these are formally recognised or not). However, as highlighted in the theoretical chapter presented earlier, and as emphasised in the access framework by Ribot and Peluso (2003), there is a need to take the analysis a step further by documenting and analysing how and through what other processes people are able to gain access to natural resources and thus derive benefits. The preliminary conceptual framework frames rights as a direct mechanism of access, but also emphasises the need for a holistic understanding of access within a fishery, which includes governance processes and how these aspects influence access practices. Ribot and Peluso (2003) stress the importance of looking beyond rights, and documenting and analysing wider indirect mechanisms, including the range of social relationships that facilitate access.

6.4.1 Access to knowledge

As fishing can be a labour-intensive and skilful activity, the ‘know how’ to engage in these activities should be vested in the capabilities of the fisher. During the fieldwork component of the study, the researcher posed the question of what skills or knowledge a fisher should possess in order to be able to benefit from their activities. While this was a question that at times was difficult for fishers to answer, some of the respondents tried to answer the researcher as best possible. Some of these responses included:

“Hy moet weet dus styl en moeilik, jy kry swaar maar moet maar vas hou daaraan” (He needs to know that it is difficult at times, you struggle, but he should just continue)¹⁰²; and *“’n Visser moet weet dat dit soms goed sal gaan, maar somtye ook moeilik wanneer daar geen opbrengs is nie, hy moet sy toerusting en eie vermoë ken.”* (A fisher should know that sometimes things will be good, but there might be times when you do not catch anything, he should know his equipment and should know what capabilities he possesses.¹⁰³)

While a common response by many fishers was that ‘a fisher just knows how to fish’, either as a result of growing up or being taught by their fathers, uncles or grandfathers, the researcher was informed that there was particular local knowledge about fishing activities that a fisher ‘knows’. This knowledge is usually passed on from the one generation to the next and the researcher was able to conduct and participate in interviews where these aspects of fisher knowledge were discussed¹⁰⁴. During a focus group session with fishers, some remarks were recorded concerning the type of

¹⁰² Interview with Tobias Don, 26 January 2010, at Hopland, Ebenhaeser.

¹⁰³ Interview with Paulus Frisley, 12 February 2010, at Olifantsdrift, Ebenhaeser.

¹⁰⁴ The researcher had the opportunity to conduct and participate in oral history interviews with the community in 2009. These interviews were conducted in collaboration with the Legal Resources Centre (LRC) and Masifundise.

knowledge that would help a fisher to benefit from his activities or the knowledge that he should possess. The researcher posed several questions, the responses to which are listed below from a focus group session held in Olifantsdrift¹⁰⁵:

1. How would you describe the life of a fisherman?

“As ‘n visserman moet jy weet dat dit eendag bitter is, en eendag soet. Eendag is die vis daar, next time niks” (As a fisher, you have to know, one day you have fish, the next day nothing.)

2. Where do ‘harders’ come from? Where do they spawn?

“Hulle kom van die seë af en kom lê in die rivier.” (They come from the sea and use the estuary as an area to spawn.)

3. When are the best fishing months/times?

“In die somer, ons somer maande, van Oktober tot April; Die harder kom in die rivier met die seëstrome van Augustus maand, as die rivier in die winter toemaak, rus die vis en die vars water maak dit daar minder vis is; Die wind meer uit die suid-westerse kant bring die haders in die rivier en ons vang dan in die somer die meeste vis; Dus beter om in die aand te gaan visvang, maar nie as dit volmaan is nie, die harders kan die nette dan sien en hou nie van lig nie.” (In summer, our summer months, from October to April; The ‘harders’ come into the river with the sea currents from August, when the river closes itself in winter, then the fish is able to rest and the increase of fresh water result in fewer fish available; The south-westerly wind brings the ‘harders’ into the river and in summer is our best fishing months); It is best to go fish at night, but not during full moon, the ‘harders’ can see the nets and do not like the light.)

4. Do you think there have been changes in terms of catch quantities or size of the ‘harders’? If yes, what do you think is responsible for this?

“Daar is baie meer robbe as vroeër jare, hulle eet vis en ons mag hulle nie skiet nie, so baie manne waag dit nie om te gaan visvang nie, want die robbe skeur jou nette; Daar was ‘n afname, die manne het destyds verskillende spesies gevang, soos bodemvis, maar hulle is nie meer in die rivier nie, dus aktiwiteite soos die diamant bote en die boere met hul gifkanne wat dit veroorsaak het; Die veranderinge is omdat die groot trawlers so naby kom en ook weersveranderinge wat verandering in die vis aanbring.” (The number of seals have

¹⁰⁵ Focus group session with 8 fishers at Olifantsdrift, Ebenhaeser on 24 September 2009. Present Kerneels Donn, Basil Afrika, Petro Donn, Dirk Afrika, Andries Smit, Cornelius Koordom, Martin Donn, Ralph Donn. Siena Don, a young woman, also present at meeting

increased from earlier years, they eat fish and we cannot shoot them, so many fishers do not dare to go out fishing as the seals will go after your net; There has been a decrease, historically fishers caught different species like the ‘*bodem*’ fish, but these are not in the river anymore, it is activities such as diamond mining and the farmers with their agricultural activities that caused this; The changes are due to the big trawlers that come so close off-shore as well as weather related changes that causes change in the fish catches.)

5. What techniques or knowledge may benefit or yield a good catch?

“Om te weet watter goeie plekke jy meer sal vang en ook hoe die visserman die weer lees.”

(To know which areas you are guaranteed good catches as well as knowing how to read the weather conditions.)

6. Do the fishers have any natural indicators that they use when they fish? If yes, how did you learn about these indicators and are these being used by fishers?

“Ons wyse van visvangs kom van die oertye af, van ons voorvaders, hoe hulle gemaak het”; Om die weer te ken, sal die visserman weet of hy ‘n goeie vangste sal hê; Ons kyk ook waar ons voëls sien, as dit ‘n groep duikers of seëvoëls is, weet die visserman daar is vis” (Our ways of fishing come from the previous generations, from our great grandparents, the way they used to fish; To know the weather will determine if a fisher will get a good catch or not; We also look to see if we can see birds, like a group of ‘*duikers*’ or seagulls, they will indicate to the fisher where the fish are.)

The fishers viewed these various aspects as key in securing a good catch and knowing these aspects would position the fisher to benefit from his fishing activities. During the focus group session and from individual interviews, the researcher was also informed that the knowledge local fishers have of fishing activities is passed from the ‘*groot manne*’ (old men) to the younger fishers, and to be a fisher, they should know this. An interview the researcher conducted with one of the ‘*groot manne*’, a retired fisher, Paul Miggel (‘*Oom*’ (uncle) Paultjie) continues to highlight the role of knowledge in the fishery.

6.4.1.1 Interview with Paul Miggel

‘*Oom*’ Paultjie was born in 1934 in Ebenhaeser and said that he had lived here all his life. Before the interview commenced he spoke of his father, who was also a fisherman and who fished at Doringbaai for ‘*snoek*’. When the interview turned to questions about fishing and local knowledge ‘*Oom*’ Paultjie immediately started talking about the red fish that were caught in 2008. Like the responses of many

other fishers, he added that it was the ‘*rooigety*’ (red tide) that was responsible for it. He noted that fish caught during red tide are inedible, as they have a strange smell and people are wary of consuming them, therefore fishers do not sell it¹⁰⁶. While listening, the researcher used the opportunity to ask him to talk about some particular knowledge that the fishers historically had about the fishery system (i.e. what the fishers observed, or activities or factors that they believed influenced their fishing activities). He responded that the weather is a key factor and expanded on this by adding:

“As die oostewind waai, dan is dit...kan jy maar sê jy sal nie daar kan bestaan nie, want jy waai weg. Maar hy so wes waai, dan is dit eintlik ‘n gunstige weer, want die vis waai uit die seë uit rivier toe. En vir jou as visvanger is dit ook baie veilig, want jy waai na die duskant-se wal toe met jou boot. Jy waai nie see toe nie. Om dít te weet, want jy kan nie as visvanger, as visserman kan jy nie...jy moet weet dis ‘n risiko wat jy loop.” (When the wind blows from an easterly direction, then it is ... you could say you won’t make a living, because you will be blown away with the wind. But if it blows from the west, then this is actually favourable weather as the fish will be blown from the sea into the river. And for you, you as a fisherman, it is also safe as you will be blown to the side of the riverbank with your boat. You are not blown out to sea. To know this, because you cannot as a fisher, as a fisher you cannot, you must know the risk that you are taking.)

In continuing talking about the weather and its impacts ‘Oom’ Paultjie added that the fishers know what ‘type’ of water is suitable for fishing. The temperature of the water was highlighted as key: when the water is too warm you will not get a good catch. He explained that when the water is too warm it keeps fish away, but when the water is cold, or “*donker water*” (dark water) as the fishers called it, then you are guaranteed a good catch¹⁰⁷. When the water is “*donker*” (dark) as ‘Oom’ Paultjie put it, then the fish are not able to see the net and so they find themselves trapped in the net much quicker. Therefore, it is of no use when the water is shiny or “*blink skoon*” (clear). Knowing the different types of water was therefore important. He added that the fishers still knew this and when ‘*donker water*’ conditions prevail, fishers will not go fishing. ‘Oom’ Paultjie added that “*elke water het nie daai lewe in hom nie of die vis*” (different waters do not have the life or fish in them¹⁰⁸).

¹⁰⁶ Interview with two fishers, ‘Oubaas’ Jan Coetzee and Sekkie Afrika, 24 September 2009 at Olifantsdrift, Ebenhaeser, who believed that the red tide discoloured the harders caught and that when consuming it people complained off stomach discomfort and pain. Fishers therefore believed that this fish should not be sold and some of the fish caught at that time were discarded.

¹⁰⁷ This was reiterated during a focus group session on the 21 October 2009 with 7 fishers at Papendorp where fishers indicated that the condition of the water plays a significant role in determining whether they will go fishing or not. Fishers also added that even when the moon is full, that the light that shines on the water would also result in a poor catch as the ‘*blink*’ (shiny) water often make the nets visible to the fish.

¹⁰⁸ Interviews undertaken by the researcher and others from the Legal Resources Centre (LRC), Environmental Evaluation Unit (EEU) and Masifundise Development Trust (MDT) (2009). Proceedings from Oral Histories Recorded with community Members of Ebenhaeser, Ebenhaeser Community Hall, January-February 2009.

While talking about the different ‘waters’, he continued to talk about the river and fish, but by personifying these. This was portrayed when he spoke of how the river closes itself during the winter months and how during this period the fish rest. During discussions with fishers, the researcher realized that what is meant by the river closing itself is that during the winter months when excessive rainfall is experienced, flooding often occurs. When this happens there are local beliefs that the river closes itself off and no fishing occurs. Many fishers therefore believe that this is how the resource replenishes itself and this is how the fishers contribute to its sustainability.

This interview highlights the local fisher knowledge that is held by fishers of Ebenhaeser, has historical origins, and is still known today. The interview presented here highlights how local knowledge of fishing activities and beliefs about certain weather conditions, for instance, influences whether fishers go out fishing or not; thus, this knowledge influences their abilities to derive benefits. Peluso (1996) notes that access to certain resources may be driven by more than economics and moral claims and may serve social, political or spiritual harmony. The fishers indicated that to know weather conditions, and not going out when the wind blows from an easterly direction, would mean that the fisher stays safe and therefore fishing takes place when wind is coming from a westerly direction. This arrangement could be viewed as maintaining ritual harmony, and how fishermen make sense of the world that they operate in, by using their knowledge to sustain their fishing practices and abilities to benefit.

6.4.2 Access to technology (equipment)

Fishing at the Olifants estuary occurs in the lower 15 km of the estuary. Gill-nets are set from the ‘*bakkie*’ (Figure 18) and are allowed to drift with the current, but are checked regularly (Carvalho *et al.* 2009). One of the most important mechanisms to be able to benefit from accessing fisheries resources in the estuary is to have access to a ‘*bakkie*’. While not all the fishers own a ‘*bakkie*’ several fishers do. For those who do not, making use of a fellow fisher’s ‘*bakkie*’ or working together occurs regularly¹⁰⁹. These ‘*bakkies*’ are non-motorised; access to two oars is important as these are used for rowing.

¹⁰⁹ Interview with two fishers, ‘Oubaas’ Jan Coetzee and Sekkie Afrika, 24 September 2009 at Olifantsdrift, Ebenhaeser.



Figure 18. Two fishers setting out on a 'bakkie' at Olifantsdrift, Ebenhaeser (Photo: Samantha Williams, September 2010).

The main equipment used for capturing harders are gill-nets. While the use of these nets has been prohibited in estuarine environments in South Africa, their use is still permitted at the Olifants River estuary. Therefore, fishers need access to nets to catch their target species, and these are usually purchased at the cost of R900. During a fishing trip, fishers would deploy gill-nets, which are 2 m in depth and have a mesh size of 48 - 54 mm, but they mainly use 52 mm¹¹⁰. While fishers typically buy these nets and maintain them, historically the method of 'net brei'¹¹¹ was done by the fishers themselves. During an interview with 'Aunty Saartjie' Afrika of Olifantsdrift, she explained that her father, Dawid Donn, was the well-known 'net breier' (net-maker) of Ebenhaeser. As children they had to assist in the household, the sons usually with the fishing activities and the women with net-making. 'Aunty Saartjie' recalled that, at a very young age, she had to help sew nets when her father went out fishing or to work elsewhere. During an interview she explained:

"Dis baie werk. Sommer deur die nag. My pa het baie nagte deurnag gebrei. Sommer in kerslig of in die lamplig, soos ons dit genoem het. Ons het maar lampies gehad. En as hy more oggend gaan werk, dan sê hy vir my: 'Jy brei nou hierdie stukkies verder. Ek wil sien as ek gekom het, hoe lank jy gebrei het.' So al help ek my ma hier by die huis, dan moet ek nog daai stukkies ook

¹¹⁰ These net measurements are outlined in permit conditions as set out by the management authorities and fishers need to comply with these conditions.

¹¹¹ Net-making.

brei. Só het ons aangekom.” (It’s hard work. Sometimes working right through the night. My father sewed nets many a night. Sometimes by candlelight, this is how we called it. We had small lamps. In the morning when he went out working then he would tell me: ‘You continue to sew this little piece. I want to see how far you can sew when I come back.’ So even though I helped my mother at home, I also needed to help sew nets. That’s how we managed¹¹².)

While the use of gill-nets is a key mechanism for fishers to be able to benefit from access, this method of capture has raised concerns, especially in light of the over-exploitation of line-fish bycatch (which also get trapped in these nets) (Hutchings & Lamberth 2002). Across the world and locally, the use of these nets and concerns for line-fish bycatch have also been highlighted, but controversy surrounding gill-netting is not a new issue in South Africa. As early as 1895, political pressure by local line fishers who felt that gill-nets were decimating line-fish stocks resulted not only in conflict between these groups, but also action being taken against gill-net fishers (Van Sittert 1992; Thomson 1913, in Hutchings & Lamberth 2002). It is as a result of concerns about over-exploited line-fish stocks that the policy directive to phase out gill-net fishing activities at the Olifants River estuary has been put in place. This policy directive, however, is being challenged by fishers, as they have expressed fear for the loss of their livelihoods, traditions and cultural aspects, as well loss of their ability to benefit from resources.

It has been highlighted above that the use of technology and equipment and having access to these is crucial for fishers to be able to benefit from resources. It is virtually impossible to harvest fish without the equipment, but, as highlighted above, where fishers do not possess these, they are able to access these from fellow fishers. Therefore, investment in social relations is also critical in terms of benefitting from resources. The section below provides more context to this mechanism.

6.4.3 Social relations

While women and young children historically assisted with net-making, fishing has predominantly been undertaken by men, with women playing a key role in pre- and post-harvest activities. Some of these activities include making sure that the fisher is prepared before setting out on a fishing trip (e.g. preparing a meal for him to take along while out fishing, or ensuring that the fisher has everything he would need for his trip). Therefore, the role and contribution of women further extends the social network within the fishery. In relation to the role of women in fishing, an interviewee added that, historically, women and children also assisted with tasks such as packing fish in baskets or helping with the selling and drying of fish. Locals in Ebenhaeser called the process of assisting with

¹¹² Interview with Saartjie Afrika, at Olifantsdrift, Ebenhaeser on 3 December 2010.

post-harvesting activities '*vis koelie*'¹¹³. However, young women have recently been showing interest, with some even learning how to row a '*bakkie*'.¹¹⁴

Fishers usually set out in the early evening on a fishing trip and stay out all night fishing¹¹⁵. When this happens they make shelters, or '*skerms*' as they are locally known, on the banks of the river. During a fishing trip, the '*skerms*' area would be where fishers would meet to rest, eat together, drink coffee or even sleep until morning when they return back to the fishing settlements¹¹⁶. As many fishers work in pairs,¹¹⁷ having a fellow fisher with them not only serves to provide assistance during fishing trips, but also provides a companion who could assist if an emergency arises. In this instance, the relationship between the fisher and '*bakkie maat*', or permit holder and non-permit holder, respectively, is beneficial¹¹⁸. This is because the fisher without a permit is able to work with the permit-holding fisher, and the latter has the benefit of assistance. Both fishers, therefore, engage in harvesting and/or selling, where possible, and the benefits are evident for both fishers and in terms of catch, at times shared equally. During fieldwork the researcher was also informed that many fishers either fish with a son, cousin or other family member and therefore in most cases, benefits from catches are shared equally or kept within the family to share.

When fishers return from a fishing trip, and if a good catch was harvested, arrangements are made to sell the fish fresh in nearby towns or to community members. When a fishing trip produced some fish, but not a significant amount to sell, the catch will most often be consumed at home. During interviews, or while talking to community members informally, the researcher was informed by that even where there may not be a fisher within a household, community members are able to get fish from neighbours, and this is a lifeline in times when there are no other food options¹¹⁹. These community characteristics displayed by households at Ebenhaeser are not unique to South Africa, but in many developing countries poor and rural fisher communities are considered among the poorest and most marginalised sectors of society. Therefore, by investing in community and social relations, these strengthen individuals' positions in terms of being able to benefit from resources or being associated through social ties (Pomeroy & Andrew 2010; Berry 1989); i.e. even when they are unable to physically access resources, they are able to benefit through association or kinship.

¹¹³ Interview with Hanneljie Klein, community member, at Papendorp on 29 October 2009.

¹¹⁴ Interview with Jeanetta Blakenberg and Siena Don who are two young women from Olifantsdrift, Ebenhaeser on 3 December 2010.

¹¹⁵ Interview with a fisher, Aggels Blakenberg, at Olifantsdrift, Ebenhaeser on 21 October 2009.

¹¹⁶ Interview with Salvester Donn, fisher and chairperson of the OVV, 12 January 2011 at Olifantsdrift, Ebenhaeser.

¹¹⁷ For those fishers who have exemption permits issued by the management authorities, the conditions allow the permit holder to be accompanied by a crewmember or fellow fisher.

¹¹⁸ Interview with a fisher, Aggels Blakenberg, 21 October 2009 at Olifantsdrift, Ebenhaeser.

¹¹⁹ Interview with Rosie Afrika (community member), 12 November 2010 at Olifantsdrift, Ebenhaeser.

6.4.4 Access to markets

Fishing is largely influenced by the weather and the season. During the winter months, relatively little fishing occurs and when the river ‘closes itself’ or ‘comes down’, as locals describe,¹²⁰ this usually causes flooding. In 2006 and 2008 the flooding was so severe that it resulted in fishers not being able to fish for months – even during summer, their peak fishing time. The fishing effort was extremely low and fishers believed that these flooding incidences influenced the availability of fish¹²¹. However, when fishing is at its peak, fishermen add that a very good catch would be anything above 200 fish per fishing trip. When a good catch is harvested fish would be sold fresh, and some of the catch may be salted and dried upon returning home (Carvalho *et al.* 2009; Sowman 2003). The dried fish or ‘bokkoms’ (Figure 19), sold in sets of ten for anything between R20 and R25¹²², are considered a traditional Western Cape delicacy (Heemstra & Heemstra 2004).



Figure 19. Bunches of ‘bokkoms’ hanging out to dry at Olifantsdrift, Ebenhaeser (Photo: Samantha Williams, September 2010).

As a result of catches being erratic during some fishing seasons, it has been difficult for the fishers to establish organised marketing arrangements. When good catches have been caught, these were usually

¹²⁰ Typically during the winter months, June to August, when most of the rainfall is experienced this influx of water sometimes results in excessive flooding which the locals refer to as the ‘river that comes down’.

¹²¹ Meeting with 8 fishers at Olifantsdrift, Ebenhaeser on 24 September 2009. Present Kerneels Donn, Basil Afrika, Petro Donn, Dirk Afrika, Andries Smit, Cornelius Koordom, Martin Donn, Ralph Donn. Siena Don, a young woman, also present at meeting.

¹²² Approximately US\$3 based on a US\$1=ZAR8 exchange rate.

sold locally. Fishers would therefore arrange transport and sell the catches in the nearby towns of Ludzville or Vredendal (15 and 25 km away, respectively). In the past, fishers had arrangements with local farmers; this would see fishers contacting farmers and selling fish to them for use as a food source for farm labourers (Sowman 2003). The supply of fish to local farmers is an arrangement that has taken place for many years along the West Coast. According to Van Sittert (1992), fish was a sought-after commodity, much in demand throughout the coastal farming districts of the Cape colony during the 19th century, as fish held a number of advantages for the farmer. It was plentiful along the coast and lower reaches of the major rivers, and therefore could be cheaply acquired even in isolated rural areas. It could also be dried and last even longer (ibid). The arrangements with local farmers are no longer in place, but the sale of fish to farmworkers on adjacent farming areas is still continuing today, providing a small, yet accessible, market to the fishers. Additionally, in areas such as the nearby towns of Ludzville and Vredendal, fishers have access to local communities and small vendors to whom catches are sold, enabling them to earn a modest income. Fishers sell their catches directly to these vendors (where possible) and the presence of a middleman is not a factor in these marketing arrangements. Payment for transport to these markets can however be very costly and fishers have reported that at times this can result in almost half of their income, from the sale of their catch, being spent on transport costs. While an abundance of fish could easily saturate the market, there have not been sufficient catches in the recent past at the Olifants River estuary nor the capacity to establish formal market arrangements such as transporting fish to Cape Town or selling to fish processing factories. However, if such capacities were developed and the volume became available in the future, it could benefit the fishers; therefore, investment in skills and development or infrastructure could further benefit the community and contribute to livelihoods.

With the recent introduction of interim relief permits, approximately 29 fishers from Ebenhaeser were issued permits. They have formed co-operatives with other fishers from Doringbaai¹²³. Forming these co-operatives has been an important means through which fishers are able to use these interim permits as many lack the necessary access to boats and equipment. Furthermore, difficulties with access to infrastructure, such as refrigeration at Ebenhaeser has proved challenging to set up and establish formal market arrangements. An objective of the interim relief process has therefore been to contribute towards poverty alleviation, but at the same time ensuring job creation and the inclusion of small-scale fishers in the sector in order to enable them to improve their productivity and income while ensuring the commercial sector continues to grow (DAFF 2012).

¹²³ Interview with Salvester Donn, fisher and chairperson of the OVV, 12 January 2011 at Olifantsdrift, Ebenhaeser

6.4.5 The role of identity and culture

Although in Ribot and Peluso's (2003) framework, identity is highlighted as a key indirect mechanism, research at the Olifants River estuary found that culture and cultural practices were inextricably linked with identity. A key aspect that was dominant during several interviews, especially with the older fishermen, was associated with cultural attributes, when fishers spoke of how they grew up and started fishing at a very young age. Before the commencement of many interviews, fishers usually expressed these emotional sentiments with regard to fishing, which would include their family history. Alternatively, they would share their first experiences when they started fishing. Some of them added that having to provide for, or contribute to, the household income and food security was a strong factor that played a role in pursuing fishing. Others added that it was as a result of being taught by a father, uncle, brother or community member (Table 13).

Table 13. Primary reasons for getting involved in fishing (household survey undertaken in 68 households at Ebenhaeser during September 2010)¹²⁴

| Reason | n (%) |
|--|-----------|
| Taught as a child by parent or family member | 40 (58.8) |
| Income from fishing | 1 (1.5) |
| Needed to help support the household | 6 (8.8) |
| No other available work | 1 (1.5) |
| Not applicable | 20 (29.4) |
| Total, N | 68 (100) |

While indicating their main reasons for fishing, many of the respondents added that it was also as a result of a variety of factors, such as familiarity with fishing activities, being taught at a young age and the fact that limited job opportunities were available, that some of them felt secure as fishermen, knowing these activities so well. These responses were usually the point of departure in many interviews with fishers. During a focus-group session with ten fishers, ranging in age from 17 to 58 years, some responses around the profession and tradition of fishing included:¹²⁵

Fisher 1: *“Omdat my lewe hier is, ek mean ek is baie lief vir visvang, dus wat my lewe is.”*
(Because my life is here, I mean, I love fishing, that is what my life is about.)

¹²⁴ As the household survey was not only targeted at fishers, but all community members, there were some questions not applicable to certain interviewees and this is highlighted by the reason ‘Not applicable’ (Table 13).

¹²⁵ Focus group meeting with ten fishers from Ebenhaeser, 22 October 2009, and comments provided above was by Andries Smit (Fisher 1), Cornelius Koordom (Fisher 2) and Dirk Afrika (Fisher 3), respectively.

Fisher 2: *“Ons ouers en pa’s was almal vissermanne, ons het almal groot hier geword, ons het so grootgeword, ons het almal so van geslag tot geslag groot geword; dit kom van die voorouers af.”* (Our parents and fathers were all fishermen, we all grew up here, we lived like this, we all grew up like this from generation to generation, it comes from our forefathers.)

Fisher 3: *“Al gan ‘n man (visserman) vir 4 of 5 jaar weg, hy kom weer terug ... dan sal jy nie amper sê daai man was weg nie, dan kom gan hy net weer an, daar waar hy gelos het ...”* (Even if a man (fisherman) moves away for 4 or 5 years and comes back again ... you won’t even be able to say that that person had been gone, he just picks up again and continues there where he left off.)

These motivations or descriptions were common responses when fishers spoke of their activities or of growing up in a fisher community. These can be viewed as some of the main motivations that are responsible for fishers doing what they do.

While accessing fisheries resources in order to benefit involves a range of mechanisms, it is clear that access to a permit, boat and net enables fishers with the physical ability to harvest these resources and therefore to be in a position to benefit. Equally, the section above has unpacked that investment in social relations, for instance, or aligning oneself to a particular group can give impetus to mechanisms put forward to benefit from access. The role of different social mechanisms in access has been a core thread in conducting this research at the Olifants River estuary, as well as at the Covie case study site, (discussed in the following chapter). Therefore, as policies and certain management proposals have called for closure of the gill-net fishery, concerns about the continuity of fishing at the Olifants River estuary have been heightened. The fishers and their community have turned to the past and their historical links to the estuary as a mechanism to strengthen their claims for access.

While new management proposals are being tabled in order to balance conservation objectives with livelihood needs, the fisher community have taken it upon themselves to request the assistance of the LRC and other research partners to assist in articulating their customary claims to the estuary. After approaching the LRC in 2009, it was decided to embark on a process of documenting customary fishing practices and identifying rules or principles that might have governed the fishery. For the fisher committee, the OVV, this was important, as they needed to underline that their communities’ historical use of the estuary should be recognised and respected in any management plan that could impact on their future access to the estuary and, in particular, the fish resources¹²⁶. Furthermore, calls to be recognised as a traditional fisher community have been the point of departure in this process; specifically, the role of fisher identity and culture have been prominent. With assistance from the LRC and researchers from UCT, oral histories were conducted among older community members. A

¹²⁶ Interview with Pieter Cloete, former OVV chairperson, on 22 October 2009 at Olifantsdrift, Ebenhaeser.

key interest was to gather information on: historical fishers who still lived in the area; the species harvested; the equipment used; whether local rules guiding the fishery existed, and, if any, how these were exercised by the fishers; the local fisher knowledge that existed about the fishery; and the history of all of these activities.

An interview with one of the oldest members of the Ebenhaeser community, the late Mr William (Walkie) Joseph Taylor, highlights the importance of the river and its resources in people's lives, culture and identity. As outcomes from interviews from the Ebenhaeser case study have shown that identity and culture are key mechanisms that have been forthcoming from fishers, community members and their committee, it would be fitting to highlight the local narratives that strengthen these mechanisms. The interview conducted with Mr Walkie Taylor is portrayed here, as it demonstrates the long history and tradition of fishing at the site, and outlines key processes that have occurred and shaped access to natural resources here. Furthermore, within a community context these documentations and references are identified as mechanisms that are being drawn on to claim access or substantiate access practices. While Mr Taylor is the narrator in this particular interview, several older community members were involved and present during the interview. This interview was selected for two main reasons: The first is that it provides a rich account on some of the customary origins and livelihood practices of this community, by one of the oldest community members. This particular interview includes reference to fisher knowledge, fisher identity and culture, investment in social relations, as well as how various historical events that impacted on access to resources, are compared to contemporary hardships. The interview is presented in a storied snapshot manner, highlighting various aspects of the interviewee's life, recollections or known history about the community and fishing practices. Secondly, it introduces another key mechanism that fishers and their community draw on in order to access resources. This is related to the process within which these interviews took place; i.e. through engaging in a research partnership in order to benefit. This mechanism of access is detailed in the section that follows.

6.4.5.1 Interview with the late Joseph William Taylor ('Oom' Walkie Taylor)

Born on 6 October 1935 at 'Ou Ebenezer' and moving to Ebenhaeser at the age of six years, 'Oom' Walkie Taylor (deceased 10 April 2011) was certainly regarded by many community members as the person to talk to about the history of Ebenhaeser. Before the interview started, it was explained to him that the interview would cover various aspects including his upbringing, the community, and activities undertaken by community members, among others. When the interview commenced, he started speaking about Old Ebenezer and his memories thereof. At first impression, his recollections of old Ebenezer seemed vague and when he spoke of them, sadness mirrored his face. However, when he continued to talk about it, he said that the land was beautiful and fertile and when the white people saw that, they decided that they would go and live there, as the inhabitants of Old Ebenezer had the

best and most fertile land. ‘Oom’ Walkie looked frustrated when he added that this was when they sent the people of Ebenezer to Ebenhaeser. He talked about Old Ebenezer as the area where it was currently green with its beautiful vineyards. This today, described in *Chapter Five*, is current-day Ludzville – a productive wine-cultivating area. He added that from various stories told by older community members, they learnt that the man that divided the land and gave it to the white farmers was known as ‘old Ludtz’ – the superintendent at the time. He continued to talk about Old Ebenezer and how residents from Old Ebenezer always told people (the white people) that the place called Ludzville is Ebenezer. This is how he explained that he knew about the land change of Ebenezer to Ebenhaeser and how people were settled there.

‘Oom’ Walkie remarked that, from his earliest memories, when they (his family) moved from the Old Ebenezer to Ebenhaeser, people were already settled there. He was not entirely sure of the year, but he believed that he was about 6 years old. He added that his father worked for white farmers at Ebenezer (now Ludzville), but that he also inherited a small piece of land there from his parents, on which he grew pumpkins, lentils and sweet potato. His father passed away while he was still young; again, he was not exactly sure of the year. When asked if he knew any other stories about Ebenezer, the people, their activities and livelihoods, he responded by saying that his mother, Katriena was a woman who never went to school, could not read or write, but could speak English, and would tell them stories about the old days. After a few minutes and while starting to recall some of his mother’s stories, there was a change in his mood when questions were posed about the activities that people were involved in to make a living. He spoke excitedly about how his mother told them about people of the community who tilled the land and worked hard while there were also others involved in fishing. According to ‘Oom’ Walkie, when most of the people were moved to Ebenhaeser, where the land was less fertile, he believed that they went fishing more frequently and, from there on, it became even more important as many people no longer had land on which to work. During the interview, he pulled out a piece of paper, on which he said he had gathered and thought best to write down his thoughts. He wanted to ensure that he did not forget important things that he wished to say. He started by saying that fishing was so important to the community and that the resource had always been in such abundance. He then started reading from his piece of paper:

“Daai vis kan jy nooit ... Die Olifantsrivier. Die Olifantsrivier met sy waters, die mooi slukgrond en sy vis, is onlosmaaklik van mekaar...dis een proses. Dis wat ek nou hierso skrywe ... dáár was dit vir my ‘n lang stuk geskiedenis. Ja, daarom is dit deel van die proses. Die rivier hardloop soos ‘n slagaar hier deur ... Dié gewoonte visvang, die gewoonte visvang bykans 100 jaar ... vis en brood die stapelvoedsel van ons mense. Reg langs die rivier se oewer. Hoogwatermerk by Papendorp en verder op die kuslyn. Twee vissies en 5 broodjies het soveel mense gevoed in die ou tyd en dis nog steeds dié kos wat op alle tafels vandag die lekkerste smaak. Hoe kan julle die massa mensdom beperk en ontnem van die bron van lewe en genot?

Kan jy amper sê. Ons weier om hierdie waarde te verloor. Ons kan nie ons regte ... en ek moet weer dit onderstreep, ons bykans soveel jaar se gewoontes verruil vir 'n bord lensiesop nie. Leef en laat lewe. Ons is geefs deur apartheid agtergelaat. Ons word mos geïdentifiseer vir die 'agtergeblewenes', nee, ons is agter gelaat! Laat ons versoën met mekaar en saam woon soos een familie ... een van sin en waarheid. Maar, dit die klomp nonsens wat ek hier geskryf het.”
 (That fish you could never ... The Olifants. The Olifants and its waters, the beautiful land and the fish, it is inseparable from each other ... it is one process. This is what I wrote down here ... that is one long history. Yes, that is why it forms part of the process. The river runs like a vein through this area ... The activity of fishing, this activity of almost 100 years ... fish and bread is the staple food of our people. Right next to the river's edge, high-water mark at Papendorp and all along the coast line. Two little fish and 5 loaves of bread used to feed so many people in the olden days and it is still on tables today as the food that tastes the best. How can they restrict the large amounts of people and want to take away the source of life and enjoyment? You can almost call it that. We refuse to lose this value. We cannot let go of our rights and I underlined that, that we cannot let go of values accumulated over so many years in return for a bowl of lentil soup! Live and let live. We were left behind by apartheid. We have been identified as the ones left behind, no, we were left behind! Let's reconcile with each other and live together as a family, one of respect and truth. But, this is just a lot of nonsense that I wrote down here ...)

From this written account, several aspects are worth weighting. The first is about the resource in question: fish – or, more specifically, harders being the targeted species harvested in the case study site. His perceptions about the resource's sustainability were that the resource is in abundance and that the “*visserman met sy bakkie sal dit nooit kan uitwis nie*” (fishermen on their dinghies will never be able to compromise its sustainability and availability). This is a sentiment that is shared by many fishers in the community and has been highlighted in responses during focus group sessions and meetings¹²⁷. Secondly, his words about the land and fish could be concluded as reference to two key processes currently underway: the land claim and future estuarine management processes. While not involved in the actual negotiations or processes surrounding the land and fisheries management processes, ‘Oom’ Walkie and many older community members frequently attended meetings and therefore had insights into these processes. Thirdly, he emphasises the communities’ long history and

¹²⁷ Focus group session with seven fishers at Papendorp on 21 October 2009. Present were Andries Cloete, Koos, Gert Cloete, Willem, Paulus Cloete, Oom Fottel and Frank Andrew. During some meetings and focus group sessions, such as that at Papendorp, fishers expressed their perceptions about resource sustainability or changes in species and availability, but many were of the opinion that their activities would not exhaust the resource. However, they admitted that certain species were not available anymore or that numbers of available species might have decreased, but that this was a consequence of various factors, even including recent changes in weather and global weather phenomena.

dependence on fishing and how people's livelihoods and food security are dependent on fishing. He posed a question in his comments, asking how people could be restricted from fishing if this is what they depended on for their livelihoods. Fourthly, when speaking about rights, he emphasised that the community cannot let go of these rights; that as a community, they were forgotten under the discriminative apartheid government. He reiterated that he felt that the community was left behind.

As he grew up in a fisher community 'Oom' Walkie said that he was a fisherman. He said that he had worked for 24 years at sea and on the river and, because of that, was able to raise eleven children. He continued talking about how fishing activities were organised during the earlier years at Ebenhaeser. He maintained that there was order and understanding among the fishers. When asked to provide examples of what he meant in terms of order and respect, he could recall three unwritten 'rules' that were known by all and respected: The first was that there was no fishing on Sundays. Sunday morning was devoted to church, but in the afternoon and only in the afternoon, the fishers could launch their 'skuite'¹²⁸ and head to the 'Baken' (beacon), where there was a small island. When the first 'skuit' or fisher arrived at the island, he would be, as they called it, 'eerste skuit' (the first boat). The first boat arrangement was therefore seen as a practice which became a second rule to how they would organise their fishing activities. Everyone that arrived after the first boat would line their boats up accordingly. The 'voorskuit' was the first to set out when the new week of fishing commenced. 'Oom Walkie' said that the fishers were eager to be 'voorskuit'; sometimes when the Ebenhaeser fishers arrived, they would find that a Papendorp fisher was already 'voorskuit', as Papendorp was located closer to the meeting point. He added that it was a practice that the fishers knew and respected, and that no one would 'jump the line', so to speak, or set a net before the 'voorskuit' went out. While there were no direct benefits to being 'voorskuit', it was just a local norm that the fishers observed.

During the interview 'Oom' Walkie was asked if he could think of or recall an incident where someone might have ignored any of the rules. He quickly answered 'no' and said that he really could not think of anyone who had ever transgressed. He maintained that everyone respected each other, but if there was a quarrel or incident among the fishers, which was rare, this would have been reported to the church. Being reported to the church was a "*groot verleentheid*" (scandal) and when the elder members of the church spoke it was harsh words. He laughingly remarked that it was so harsh, "*hulle kon jou ma slaë gegee het*" (they might as well have whipped you).

A third unwritten rule among the fishers that 'Oom' Walkie pointed out, was that fishers were not allowed to secure nets from one 'oewer' (river bank) to the next. When asked why this was not allowed, he mentioned that it would result in the river being 'closed off', which fishers believed would disturb the flow of the river and the fish. He added:

¹²⁸ Boats; however, these were described by respondents as being slightly bigger than the dinghies that are currently used.

“As jy die rivier toestee, dan kry jy die next man mos nie vis nie. Dís belangrik. Jy kan nie die rivier toestee nie, dan kry die next man nie vis nie. Jy kry alleen die bietjie wat daar kom en die ander wat nog daar is, draai om. En hiêrdie man ... Maar die goeie verhouding en die samewerking is daar sodat ons mekaar kan die geleentheid gee om ‘n vissie in die hande te kry.” (When you close off the river with your net, then the next fisher won’t be able to get fish. That’s important. You cannot close off the river, the other fishers won’t get any fish. You alone get some and the rest, they have to turn around. And the next man ... But there was good relationships and co-operation so that we could all give each other a chance to get some fish¹²⁹.)

During the interview it was stressed several times that this type of behaviour could not be allowed that the fishers would not engage in such practices; if they did, their nets would probably end up being run through by other fishers on their ‘*skuite*’, therefore this could not be allowed to happen. Towards the end of the interview he could not think of any other rules, but reiterated that people knew how to behave, that there was no need for formal laws ‘like today’, and the things that he had just mentioned were not known as rules to them, but rather just as a way in which things were done.

This particular interview was selected and presented here as several factors and events that have impacted on the community, their livelihoods and access to natural resources at the site are highlighted. The first event that the interviewee talked about was of land dispossession, or the change of land that took place at Ebenhaeser. ‘Oom’ Walkie Taylor was not the only interviewee that spoke of the land exchange that took place. In many interviews this event was highlighted as a major factor that impacted immensely on the community. Many interviewees linked the events of historical dispossession with the current hardships that they face in terms of unemployment, lack of opportunities, limited infrastructure and a lack of development in their area. Equally as many compared their hardships to processes that are currently posing threats to their continuity in sustaining their access to fisheries resources and the benefits (material and non-material) that they derive from it. These perceptions were more than often supported with interviewees stating that they were the dispossessed, that they felt left behind by the previous government and that now, in the new dispensation, the events of the past seemed to be repeating themselves¹³⁰.

Of all the interviews, however, the interview with ‘Oom’ Walkie Taylor was the most passionate; when he spoke about the communities’ dependence on fishing and how they cannot be separated from fishing. Fishing practices and rules, including not securing a net from the one ‘*oewer*’ to the next (a

¹²⁹ LRC, EEU and MDT (2009). Proceedings from Oral Histories Recorded with community Members of Ebenhaeser, Ebenhaeser Community Hall.

¹³⁰ Interview with Rosie Afrika on 12 November 2010 at Olifantsdrift, Ebenhaeser.

practice that fishers confirmed is still in place today¹³¹), demonstrates fishers' investment in maintaining social order in terms of the *modus operandi* of fishing. This thereby attempts to ensure an 'equal' distribution of benefits. While respondents noted fishing's importance in terms of providing income and food security, several respondents spoke about fishing in terms of more than food and an income. They added that their fishing practices were rooted within their history, as a community who live adjacent to the estuary.¹³² As 'Oom' Walkie pointed out metaphorically: 'the river runs like a vein through this community'. These sentiments were evident in many responses from fishers and during the focus group sessions, where it was reiterated that with limited job opportunities and fishing being all that they know, this is an extremely important activity for household income and food security¹³³.

6.4.6 Networks as a mechanism of access

The interview documented above is an outcome of a community-research partnership between the community, the LRC, MDT and the EEU. When the initiation of the OEMP took place in 2008, the fishers and the broader community of Ebenhaeser were largely unaware of any of the proposed plans for the estuary. Since learning about the proposed plans, the community and the OVV have expressed their reluctance to participate in any processes that could undermine the fishers and their livelihoods. Furthermore, recognition of their historical and current rights to resources, as well as their cultural tradition of fishing in the estuary, has been a core focus of their claims and arguments. The community has called on all involved in the OEMP process and government to acknowledge, respect and understand their historical and cultural links with the estuary and its resources, as well as their dependence on fish resources as a primary source of food and livelihoods for many households.

Therefore, the community of Ebenhaeser have been in partnership with the LRC, MDT and the EEU (the latter being where the researcher is based) since 2008, and they continue to engage with research partners and other stakeholders on various aspects, related to the land claim and fisheries planning and management processes. The EEU, in particular, has had a long engagement with the Ebenhaeser community. Reference to this engagement dates back to 1993. During this time, the fisher committee approached researchers at the university for assistance, as they were concerned that the anchoring of diamond mining boats at the river mouth of the Olifants River estuary was reducing their catches (Sowman 2003). Over the years, through consultation and participation in a range of monitoring and research-related activities, the research-community partnership has been functioning since 1993 and still continues (Sowman 2009). The EEU has collaborated with many other researchers and

¹³¹ Interview with Salvester Donn, chairperson of the OVV, on 12 January 2011 at Olifantsdrift, Ebenhaeser.

¹³² Comment made by the son (also a young fisher) of a late fisher at a community meeting in Ebenhaeser on 7 September 2009.

¹³³ Focus group session at Olifantsdrift, Ebenhaeser on 24 September 2009.

institutions while engaged in research and capacity developments with the community at Ebenhaeser. Early research activities (during the 1990's), especially after democratisation in South Africa, were largely based on facilitating the development of a co-management system for the Olifants River estuary harder fishery (Sowman *et al.* 1997). During this period of transition, the university-community partnership saw shifts occurring from a research and co-management focus to enhancing awareness about fisher rights outlined in the Constitution, and other pieces of legislation relevant to resource management (Sowman 2003). The focus of this partnership has, in recent years, shifted to direct efforts to ensure greater inclusion and participation of the local fisher community in decision-making processes, securing resource rights and challenging existing policies¹³⁴. Initiatives that promote participation of the Ebenhaeser fishers with other fisher communities and organisations, both locally and abroad, have resulted in the sharing of experiences and knowledge among fishers and enhanced sound networking. The OVV has, through their association with the fisher-lobbying group, Coastal Links¹³⁵, been able to engage in and stay informed about fisheries policy and management issues that impact on their lives and livelihoods. One of the local community development officers engaged in this partnership was able to present the project team's research findings at an international conference on fisher knowledge and rights in Canada with the university research partners. This exposure to international thinking and debates further expands knowledge sharing and capacity-building, and creates awareness of the rights of traditional communities utilising natural resources across the world. Engagement in these networks creates awareness, promotes the sharing of knowledge, enhances and capacity building; therefore, fishers and their representatives may be in a better position when engaging in processes which affects their access to fisheries resources.

While the process of finalising the OEMP is on-going, the community, and increasingly other stakeholders, have acknowledged that continuing consultation with the fishers in detailed planning of the estuary is required and cannot be rushed. While various interventions have resulted in the proponents of this management plan acknowledging that a more holistic, integrated and participatory approach to estuary management is needed, the fishers and the community have been able to alter the agenda and process by being present at all meetings and by increasingly providing inputs on most aspects related to estuarine management. In 2011, the chairperson of the OVV was elected to serve as co-chair on an interim forum that is directing and co-ordinating all activities relevant to the development of the estuary management plan, as well as implementation of certain objectives agreed on by all stakeholders. The fisher community has, therefore, ensured that representation from their

¹³⁴ For a detailed discussion on this university-community partnership, see Sowman (2009).

¹³⁵ Coastal Links is an extension of MDT and as CBO has presence of 21 fishing communities in the Western Cape and Northern Cape provinces. Its establishment was primarily based on ensuring that coastal fishing communities were in a position to mobilise themselves to secure their livelihoods and human rights. With a total membership of 1 858, Coastal Links consists of four regions with three in the Western Cape (the Northern Cape serving as the fourth) (source: MDT; available online: <http://www.masifundise.org.za>).

local fishery governing body is involved in the forum; this ensures access to current information on the planning and management process.

The research partnership between the community, the LRC, the EEU and MDT is on-going and, throughout this process, the researchers have tried to facilitate a balanced approach to management by acknowledging what management plan can afford in terms of ensuring that the ecological integrity of this estuary is maintained and enhanced, but that conservation interests are also balanced against local livelihood needs. In this case, recognising the customary practices and socio-economic conditions of this fishing community, and their reliance on this estuary, is vital for any management plan to be sustainable and accepted.

6.5 SUMMARY

This chapter applied the preliminary access framework presented in *Chapter Three* to the Ebenhaeser case study and presented findings from the field research. It commenced with a description of key governance processes at the Olifants River estuary and how these processes have a bearing on access mechanisms. What is evident here is that the governance system and, more specifically, fisheries policy formulation and upcoming implementation phases are in a pivotal stage of development. Key is that small-scale fisheries, after years of neglect and marginalisation, are receiving necessary acknowledgement and attention in terms of the role that this sector plays in the livelihoods of the people of Ebenhaeser, and also the historical and cultural importance that it holds for fisher communities. The initiation, development and expected implementation of the new SSFP is a paradigm shift in small-scale fisheries governance, and has had an influence on how issues of access are being discussed and negotiated. For all governance actors, incorporating the principles outlined in the policy in estuarine and fisheries planning, management and decision-making is challenging and requires a very different *modus operandi* from the science-dominated, technocratic and regulatory approach to fisheries management witnessed at the Olifants River estuary. The development of a management plan for the estuary bears witness to these challenges, but emphasises an important outcome of the process, which relates to awareness of rights by local fishers, and that the power dynamics in governance systems and processes are changing, which in turn has bearing on how governance actors perceive and consider access issues. The governance processes described above have illustrated that, by challenging the science- and state-centred processes and outcomes, and by repeated calls for acknowledging local user rights to resources and participation in decision-making processes, there has been a shift in power (especially from a local resource-user perspective) and a reconsideration of access issues.

The chapter continued, with the presentation of the direct mechanisms, i.e. rights (formal and informal) that local resource users employ to gain access and derive benefits from resources. Here, the role of informal rights and more specifically claims to customary use and access were evident. The

claims have been strengthened by the broader policy and governance processes that are underway at the Olifants River estuary were described. Furthermore, the indirect mechanisms that facilitate access were identified and described. These indirect mechanisms, as identified by Ribot and Peluso (2003), were of relevance when applied to the Ebenhaeser case, but additional indirect mechanisms identified as relevant to this case study included knowledge, identity and culture, as well as engagement in networks. The use of these indirect mechanisms has underscored that fishers are able to maintain access and alter the power dynamics and trajectory of the governance system and processes at the estuary. Moreover, a key aspect of indirect mechanisms was the prominent feature of social intricacies and histories linked to the access of fisheries resources, and how these still manifest in livelihood practices.

University of Cape Town

7.1 INTRODUCTION

The objective of this chapter is to present and discuss the results from the Covie case study. By applying the preliminary conceptual framework here, this case study revealed that management, as a governance process, had significant bearing on access in the case study area. Policy and management decisions and processes of the park have bearing on access practices of local resource users abutting the park, even if some of these activities are regarded as ‘informal’ or illegal from a formal statutory perspective. In *Chapter Five* some of the earliest markers in terms of protected area governance were discussed. This chapter commences with a brief description of how protected areas, such as those in TNP, are managed.

It has been indicated that the establishment of TNP was a turning point for natural resource utilisation in the area, as its formation was accompanied with the status of being the first national park established in the country, and varying degrees of policy and management protocols were implemented to uphold its conservation objectives. Thus, the first section of this chapter begins to highlight governance processes, such as management, and sets the context for the environment in which access is shaped or takes place (Ribot & Peluso 2003). Furthermore, by situating access within a socio-political context, the description of the establishment of TNP and its governing policy frameworks (provided in *Chapter Five*), and the upcoming section on management, demonstrate how governance processes impact on access practices, and how local resource users respond to such arrangements.

In the major section of this chapter, direct and indirect mechanisms are discussed in relation to the preliminary conceptual framework applied to the Covie case study. During the data analysis stages, it was revealed that while the role of formal rights is acknowledged, resource users attach significant value and legitimacy to historical and customary access practices and these influence, and shape their contemporary access practices or motivations for access. In this case study, the relevance of ‘informal’ or ‘illegal’ fishing (which occurs in the TNP MPA) is apparent, but its legitimacy is validated by customary claims. This chapter presents some of the claims made by respondents in order to underline that formal statutory law and processes are not the only bodies of law or practices that are relevant, and that these may not even be seen as legitimate by resource users. Rather, as the findings show, local resource users call for recognition of historical and customary practices of fisheries resources, demonstrate respect and attach value to these systems (even while they are not formally recognised). This highlights how access takes place in a plural legal system. The chapter

continues with a description and analysis of the indirect mechanisms of access relevant to the Covie study, which are drawn on to benefit and make claims to access fisheries resources.

7.2 GOVERNANCE PROCESSES AFFECTING ACCESS

7.2.1 Management: The TNP management plan

The management of protected areas, such as TNP, is undertaken by any organ of state or organisation to which the Minister has assigned powers (Strydom 2009). In the case of TNP, that authority is vested in SANParks (South African National Parks), and the development of management plans for such areas is a prerequisite outlined in the NEM: PAA. Therefore, the development of the management plan for TNP was undertaken by the SANParks, as required to comply with various other national legislation and international conventions that have been signed and ratified by the South African government (SANParks 2008) and that have bearing on protected areas. In compliance with the NEM: PAA, SANParks develops management plans for each of the parks that it manages. The first step in developing/revising a management plan is to develop a vision of a desired state of the park (SANParks 2008). With regard to the Tsitsikamma, a vision was developed during two workshops with limited community consultation, attended by SANParks, CapeNature¹³⁶ and key external stakeholders. The park's vision states that it strives to be "an integrated protected area that effectively conserves a functionally linked mosaic of diverse terrestrial, freshwater, estuarine and marine ecosystems, landscapes and cultural heritage, representative of the Garden Route that contributes to the wellbeing of present and future generations" (SANParks 2008:22).

The physical extent of the park includes a terrestrial section, which is approximately 29 000 hectares, and a marine section, which is about 35 100 hectares (SANParks 2008). The latter is divided into two main zone types:

- *Marine restricted areas:* The marine areas of the park, except marine areas west of Nature's Valley and the Nature's Valley beach, were classified as *restricted marine protected areas* in accordance with the appropriate legislation (the MLRA). Effectively, this declares the areas a 'no-take' or restricted zone for any marine living resources. This applies to the area of 34 300 hectares, which makes up the TNP MPA and extends between 0.5 and 3 nautical miles offshore along the length of the eastern section of the park.
- *Marine controlled areas:* The remaining smaller marine areas of the park, comprising 800 hectares and situated adjacent to the TNP MPA, are identified as *marine controlled areas*.

¹³⁶ Public institution with statutory responsibility for biodiversity conservation in the Western Cape province of South Africa

These are currently managed under the NEM: PAA legislation. Specified and strictly controlled use of marine living resources is allowed in accordance with the MLRA (18 of 1998).

(Adapted from SANParks 2008.)

When the national park was established in 1964, all activities in the park, which included fishing, were not immediately prohibited. In fact, SANParks allowed certain activities by local communities to continue. This included allowing controlled fishing to occur, although this was systematically reduced and finally prohibited as a result of concern about the state of line-fish stocks in South Africa (SANParks 2008). Evidence provided by Hanekom *et al.* (1997) suggests that even allowing moderate rates of exploitation was not sustainable; hence, the closure of offshore zone fishing was enforced. This was followed by a steady reduction in the extent of the shoreline where shore angling was permitted to, finally, the complete closure of this area in 2001, after which it was proclaimed an MPA (See Figure 20) (SANParks 2008).



Figure 20. Zoning of the Tsitsikamma National Park, indicating the MPA (source: Scientific Services, SANParks 2013).

The ‘no-take’ status of the MPA was based on scientific evidence that highlighted that extractive resource use was the biggest threat to the marine environment as the stock status of ten recorded angling species found in the park had collapsed in South Africa and, as a result, needed protection (Lombard *et al.* 2005; Mann 2000). The controlled fishing that was allowed to continue before the official ‘no take’ declaration saw legislated quotas, bag limits, size limits and closed seasons being initiated, but these were considered to be ineffective and added to increased fishing pressures (Bennett *et al.* 1994). With the increased promotion of MPAs as an important fisheries management tool worldwide, and the provision of evidence for increased catch rates of shore angling species adjacent to other sites, the ‘no take’ status of the park was justified (Gell & Roberts 2005; Attwood *et al.* 1997;

Bennett & Attwood 1991). One of the key motivations for declaring an MPA was that such zones increase juvenile and adult abundance, which in turn results in greater egg production and more fish larvae being dispersed by sea currents to adjacent areas of exploitation (Brouwer *et al.* 2003). The recent outcomes of a study undertaken for the Worldwide Fund for Nature (WWF) South Africa by Turpie *et al.* (2006), emphasised the economic benefits and values of the MPAs along the Garden Route coast of South Africa (which includes the Tsitsikamma). This can be approximated to in the region of R33 million annually through fish exports, larvae and adults harvested from adjacent areas of exploitation, among others.

In terms of compliance, SANParks personnel undertake these duties as fisheries control officers and are responsible for the enforcement of compliance with the legislation, by undertaking regular patrols (SANParks 2008). There have been numerous demands by local communities bordering the eastern section of the park (communities include Covie and Coldstream) to open up or permit access to the coast and allow some fishing within the MPA (Watts & Faasen 2009; SANParks 2008). However, these demands have been met with opposition, especially from the science community and other stakeholders who wish to see the current *status quo* upheld. SANParks have indicated that they are not empowered to alter the ‘no take’ status of the MPA in terms of the MLRA, as this is vested in the power of the responsible minister of DEA. However, in 2007, consultation was entered into with local communities, SANParks and other government departments to look into the demands made by local angling associations on behalf of adjacent communities of the Tsitsikamma area. These consultations occurred after 70 armed members of the local Tsitsikamma Angling Association, which comprises various members of communities adjacent to the park, entered and spent a day fishing in the MPA . As this action was not anticipated by the park’s authorities, the fishers were left to continue under the supervision of park rangers and were warned that their activities should not be seen as a precedent – and that if it occurred again, they would ‘be dealt with like any other poachers’¹³⁷. However, after widespread outcry and media attention, the Minister decided to uphold the *status quo* and made the following official statement:

“After careful consideration of this proposal¹³⁸, I have decided to uphold the *status quo* by not allowing any fishing in the MPA. The reasons for originally closing the MPA in 2000 and the prevailing underlying circumstances have not changed. It is important to note that this decision will not have an impact on food security in the area as the issue dealt with is a matter of recreational fishing.”

¹³⁷ Media report from ‘The Herald Online’, South Africa (2007). Available online: http://www.illegalfishing.info/item_single.php?item=news&item_id=1949&approach_id=17 (Accessed 24 July 2011).

¹³⁸ Proposal to open up a section of the MPA for angling.

“Opening this MPA to recreational fishing will set a dangerous precedent in a conservation area that is closed to all, for the benefit of all. Allowing a few people access for recreational purposes would negate the benefits that accrue to all South Africans. A decision to open this MPA would effectively have signalled a broader shift in policy on the part of government and the beginning of a new approach that is neither sustainable nor in line with our stated objectives.”

“In addition, opening the MPA would undermine its biological sustainability. Certain line fish species are already managed as an 'emergency.' The impact of catches in the MPA will lead to a decline in abundance because many of the resident fish species are slow growing. This, in turn, will reduce the effectiveness of the reproduction potential and distribution of eggs and larvae therefore diluting the pool of reproductive fish as well as the availability of fish outside of the MPA. Line-fish catches in particular, have collapsed almost everywhere along our coastline. Simply put - there is insufficient breeding fish to replenish line fish stocks. Only MPAs hold these breeding fish in sufficient quantities to provide for new fish recruitment. If the MPAs themselves are opened to fishing, the entire national fishery will be further jeopardised.”¹³⁹

SANParks have responded that they are obliged to enforce this decision and would not enter into any further consultation on the matter (SANParks 2008). The responses from communities surrounding TNP to these statements have been that government and management do not understand their position. This is evident from statements such as: “which have reduced local communities’ fishing practices and motivations for access to recreational use”¹⁴⁰.

7.3 DIRECT MECHANISMS OF ACCESS AT COVIE

The following section will describe and outline mechanisms of access that are applicable to the Covie case study and were identified by applying the preliminary conceptual framework. The Covie case study shares similar socio-economic and cultural characteristics to the Ebenhaeser case study, but has some unique features that set it apart. Here, historical resource use included fishing, but, historically, the area had a thriving woodcutting industry and was known characteristically for these activities. As highlighted in the case study overview provided in *Chapter Five*, after the subsequent demise of woodcutting activities community members increasingly found greater dependency on other natural

¹³⁹ Excerpts from the official statement by Minister Martinus van Skalkwyk (DEAT 2007). Available online: <http://www.info.gov.za/speeches/2007/07112714151001.htm> (accessed 24 July 2011).

¹⁴⁰ Comment by Enrico Bruiners, chairperson of the Tsitsikamma Angling Forum, during interview at Stormsrivier on 18 October 2010.

resources including fisheries resources. Therefore, the communities of Tsitsikamma historically relied mostly on these two ecosystems for their survival (Faasen & Watts 2007).

As in the previous chapter, this chapter commences with a description of the role of rights-based mechanisms at the case study site. These mechanisms also include ‘informal’ rights. The section will continue with a discussion on the indirect mechanisms that people draw on in order to benefit or justify access at the site. As the community of Covie is still engaged in a land restitution process, very few people are settled back on the land, with approximately 20 resident families. Therefore, the researcher also conducted interviews with Covie descendants and people who left the area in the 1970’s and are now resident in neighbouring communities such as Coldstream, The Craggs and Stormsrivier (Figure 14). Furthermore, the researcher also conducted two interviews that took place in Humansdorp and Hermanus in the Eastern and Western Cape provinces, respectively. All interviewees grew up or lived some part of their lives in Covie.

7.3.1 The role of formal rights

Fishing had always been an integral part of community livelihoods at Covie, and this area saw greater dependence of fishing activities after the forests around Covie closed. While fishing represented a source of food security for families and was also sold or traded for other goods from time to time, this activity did not escape the systematic changes and limitations that were introduced in society and which finally led to the total closure of the coastal areas surrounding Covie. These actions resulted in areas that were frequented for harvesting fisheries resources, no longer being accessible to fishers and community members. While fishing has a long history in this area, the nature of these practices has changed. When traditional fishing areas became less accessible and later totally closed, there was far less fishing compared with earlier years¹⁴¹.

In terms of legal access to harvest fisheries resources, fishers at Covie and surrounding communities purchase a recreational permit at the post office that allows them to fish along the Nature’s Valley coastline. These permits cost fishers approximately R170 and are valid for one year. No permits are issued for fishing in the TNP and, while this has been an issue to which the communities around the park have been objecting for several years, there has been no recent discussion entered into between management officials and local community members. Fishing in the MPA of the park is a criminal offence (SANParks 2008). In an interview, a local fisher, who purchases a recreational licence, informed the researcher that his motivation for obtaining the licence is that he is not permanently employed and has to rely on *ad hoc* work whenever such opportunities arise¹⁴². He stated that when not working, he spend most days out fishing near Nature’s Valley and, in order to get to the fishing

¹⁴¹ Interview with Neville Pedro at Coldstream, 18 October 2010.

¹⁴² Interview with Covie resident and fisher, Ronald Cunningham at Covie on 14 October 2010.

site, he walks from home or sometimes gets a lift from a passer-by. He noted that even having a recreational permit does not guarantee that you will catch anything significant; on some days, he sets out and stays out fishing for 5 - 6 hours and returns with only two or three fish. This, however, helps in times when there is little disposable income to purchase food. Therefore, being able to go fishing assists with securing food for his household when needed.

7.3.2 Informal rights – based on customary and historical use practices

The communities of the Tsitsikamma area have a long history in terms of natural resource use and dependency, including on forest and marine resources. As discussed in *Chapter Five*, as a result of the dire conditions of many woodcutter families of the area, many subsisted on fish and even traded these for other fresh produce including vegetables. Historically, fishing remained largely an activity undertaken for self-use and trading. However, from interviews conducted with Covie residents, respondents indicated that there were also locally organised fishing activities with larger boats, and that some of the catches were sold or traded with neighbouring communities, but this system was not formalised and they were able to fish at various locations along Covie's coastline¹⁴³. As highlighted in *Chapter Four*, prior to the establishment of the Union of South Africa in 1910, the regulation of the use of marine resources was fairly minimal and “focused mainly on deep-sea fishing” (Van Sittert 1992). Therefore ‘subsistence’ fishing was left unregulated, away from state interference, and the activities of these fishers were regarded as ‘informal’.

During individual interviews, the researcher often asked respondents to share some of their own experiences or to describe how fishing historically took place. In relation to historical fishing practices, some of the questions posed encompassed: the type of equipment used; the species targeted; and, more broadly, what fishing activities entailed. As many of the interviewees shared their own experiences of being engaged in fishing, or what they remembered, many would even recall stories that their parents or grandparents had told them about how fishing activities were organised. While conducting interviews for this study, some responses to the *modus operandi* of fishing activities included:

Respondent One¹⁴⁴: “*Ek onthou dat my ma vertel het dat almal nie boswerkers was nie. Mense het gaan visvang en baie soort vis was gevang en dit was ‘geelbek’, ‘silvervis’, ‘makriel’ (wat gebruik was vir aas) en ‘stokvis’. Daai tyd het stokvis min waarde gehad. Mense het die vis geruil of verkoop aan ander mense in the gemeenskap en omringende omgewing.*” (I remember my mother telling me that it was not everyone who was involved with forestry. Some people were involved with fishing and different types of fish were caught and this included ‘geelbek’,

¹⁴³ Interview with Irene Barnado, Covie resident at Covie on 13 October 2010.

¹⁴⁴ Cecil Roberts, former Covie resident interviewed at Hermanus, Western Cape on 1 October 2010.

silvervis', 'makriel' (that was used as bait) and 'stokvis'). Back then 'stokvis' had little value. People use to exchange fish or would sell it to other people in the community and the surrounding communities.)

Respondent Two¹⁴⁵: *“Ek onthou dat die Barnado’s ‘n seënskuit gehad het. Sy naam was die Sea Hawk. Dit was ‘n groot skuit met roeispans en daar kon vier tot vyf man daarop gaan. Mense het ook meer met die handlyn stokvis gevang. Baie van die vis was om te ruil.”* (I remember that the Barnado’s had a ‘seënskuit’ (big rowing boat). It was called the Sea Hawk. It was a big boat with oars and could take approximately four to five men. People also made use of the hand-line to catch ‘stokvis’. Most of the fish were for trading).

The researcher was also informed by several interviewees that while there were some people who undertook fishing with bigger boats and went out fishing frequently at sea, fishing remained an activity that was undertaken with very low gear technology (i.e. a hand-line or stick), and this often occurred from the near-shore rocky areas. It was also confirmed that the women would fish from the rocks or teach children how to fish with the hand-line. Therefore, reference to women who were engaged in fishing, was frequently made by respondents. This was a distinct difference in terms of the two case studies presented here, as women were identified as playing a role in the actual fishing activity and they taught their children how to fish. In this case study, the women’s role in fishing, historically, was not only restricted to pre- and post-harvesting activities as commonly referenced. The role of women in fishing at Covie was further explained in an interview with two women at Coldstream: Lorenda Savage and Freda Boezak¹⁴⁶. Before the interview commenced, these women enquired from the researcher about the possibility of the park allowing partial access for fishing to the community. To this request, the researcher could only reiterate her role as student researcher to the women and add that she would not be in a position to mediate or take up such matters with the authorities. Both women informed the researcher that with limited job opportunities, that they would not hesitate to go fishing if they had access to sites closer to home. Coldstream (Figure 14), where they both reside, is located further away from areas where recreational fishing sites are located, and they would have the burden of walking or travelling this distance as well as attending to their households. The interviewees shared their experiences of fishing with the researcher and themes observed here were related to learning to fish, the role of women in fishing and how fishing activities were generally undertaken. To the question of how they first started out fishing or could remember from their first experiences, the following was shared:

Lorenda Savage: *“Ek is baie lief vir visvang, Pappa het by die saagmeule in Coldstream gewerk, maar ek was twee keer saam Pappa see toe. Ja ek het net twee keer saam Pappa*

¹⁴⁵ Pam Alexander, former Covie resident interviewed at Coldstream on 14 October 2010.

¹⁴⁶ Interview with two women and former Covie residents, Lorenda Savage and Freda Boezak at Coldstream on 12 October 2010.

gegaan en Pappa het vir my so lekker klein blou stokketjie vir my draad aangesit. Daai dag vang ek vis. Mamma het nie geglo ek het daai vis gevang nie. Pappa moet dit uitgedraai het. Ek het toe self saam met Pappa see toe gegaan die eerste keer. Maar hy het vir my gewys hoe om te maak.” (I love fishing, my father worked at the saw mills in Coldstream, but I went fishing with him twice. Yes, I went with him twice and he attached some line to a small blue stick. That day I caught fish. My mother could not believe that I caught that fish. My father had to take it off the stick. I went with my father to sea to catch fish the first time. And he showed me how.)

Freda Boezak: “*Ons was ‘n hele klomp vrouens wat see toe is.*” (We were many women that went fishing at the sea.)

Lorenda Savage: “*Nou Ant Olga, was jy al by Ant Olga in Covie?*” (But Aunt Olga, have you talked to Aunt Olga in Covie?)

Researcher: “*Nee, nog nie.*” (No, not yet.)

Lorenda Savage: “*Olga Stevens. Nou Ant Olga het vis gevang. Dit, saam met haar man, altyd gaan visgevang. Sy bly nou nog in Covie.*” (Olga Stevens. Now aunt Olga, she caught fish. This, she did with her husband. They always went together. She still lives in Covie).

Freda Boezak: “*Ja, ons het baie lekker visgevang. Kyk daar, daai tyd toe kon jy nog see toe gaan. Maar nou kan jy mos nie meer gaan nie. Jy moet nou bang wees as jy see toe gaan.*” (Yes, we used to enjoy fishing together. Look, during those times you could still go fishing. However, now you are not able to. You have to be scared when you go fishing.)

Lorenda Savage: “*Ja, jy moet ‘n permit nou hê, as jy by Nature’s Valley is.*” (Yes, you need to have a permit when you go to Nature’s Valley to fish.)

Freda Boezak: “*Covie se see, het ons toe gegaan. Antie Rienie-hulle was baie see toe.*” (We use to go to Covie’s sea. Aunty Rienie and others went fishing a lot.)

Researcher: “*En hoe gereeld het die vrouens gegaan?*” (How often did the women go out fishing?)

Freda Boezak: “*Ons was maar elke dag (As ons uit kon gaan). Ja!*” (We would go everyday (When we were able to). Yes!)

Researcher: “*Kan u dink hoe oud was Ant Freda gewees toe julle so vis gaan vang het?*” (Could you remember how old you were Aunt Freda, when you went out fishing?)

Freda Boezak: *“Nee, daai tyd toe’s ek nog jonk. Ek is mos nou oud nou. Daai tyd klim ons koppies uit.”* (No, back then I was still young. I am old now. During those days we could walk out the inclines.)

Researcher: *“O, so dit was koppe uitklim? So die vrouens het dit gedoen?”* (Oh, so you had to walk out inclines? So, did the women do this?)

Freda Boezak: *“Hulle het dit gedoen man, jinne!”* (They did it, of course!).

Lorenda Savage: *“En hulle het dit geniet.”* (And they enjoyed it.)

Freda Boezak: *“Dit was te lekker om te gaan visvang.”* (It was just such fun to go fishing.)

Researcher: *“Okay, so dit was min of meer elke dag visvang as die weer dit toelaat?”* (Okay, so it was more or less fishing most days when the weather allowed?)

Freda Boezak: *“Ja, want daar’s mos nou nie werk wat hulle kan doen of so nie. Dan moet ‘n nou maar see toe gaan.”* (Yes, jobs were scarce. They had to go fishing.)

Lorenda Savage: *“Ek onthou toe ons jonger was, somtye as ons van die skool af kom, dan sien ons maar die briefies daar onder die deur. Dan het die ouer vrouens gaan vang.”* (I remember when we were younger; some days when we arrived home from school, we would see the letters left under the doors. This is when the older women went fishing.)

Lorenda Savage: *“Ja, hulle los kos en die briefie is daar as jy kyk, hulle is see toe.”* (Yes, they left our food and a note to say that they had gone fishing.)

Freda Boezak: *“Ja, dit was ons se lewe ...”* (Yes, that was our life ...)

The excerpts from the interview with the two women are presented to provide insight into how women at Covie organised their fishing activities and attended to their households in their absence when fishing. These women made reference to other women in the community who would also fish alongside their husbands. These descriptions of women involved in fishing at Covie are significant, as the role of women in fisheries is often undermined and their role is not always acknowledged and documented. By engaging in fishing alongside their partners, or with other women, these women could strengthen bonds of shared experiences or community relations.

7.3.3 Informal rights – ‘poaching’

While fishing is prohibited near the coastal areas surrounding Covie, it is still occurring. These activities take place in areas that have been designated as protected; therefore, these practices have been deemed ‘illegal’. From fieldwork undertaken, it was established that it is exactly as a result of historical dependency and use and cultural significance that those who ‘informally’ harvest fisheries resources are claiming and legitimising their action through customary practices. These actions are in direct contrast to TNP management objectives proposed for protected areas, and are counter to maintaining biological integrity. However, in this section the aim is to discuss the fact that even where no formal resource rights exist, resource extraction is taking place; people are benefitting from these activities; and these are legitimised within community perceptions. These legitimising perceptions are evident by continued calls being made in recognition of historical and/or customary practices associated with fishing.

The proclamation of the TNP resulted in large sections of the coast becoming inaccessible to members of the Covie community. This was not well received by many locals (DEAT 2008; Faasen 2006). While the role of MPAs has been promoted globally, and its benefits have been recognised by conservationists, scientists and research managers, among others, the conceptualisation and implementation of these areas sees many differences of opinion. This Agardy *et al.* (2003) argues, is a result of some MPAs being implemented without a firm understanding of conservation science, both at an ecological as well as socio-economic level. During several interviews the researcher was asked by many members of the community if there was any possibility that some intervention may help to convince the parks authority to revisit their position on fishing in designated areas. These calls by community members for the MPA authorities to allow some dialogue about the possibility of allowing partial access is as a result of the discontent and frustrations experienced by fishers. This is consequently accompanied by activities such as ‘illegal’ fishing occurring in the MPA¹⁴⁷.

Fishing which is deemed as ‘illegal’ or as ‘poaching’ is a reality in TNP. While the researcher was unable to establish the exact number of people who engage in accessing the coast and fishing ‘illegally’, there were respondents who added that they knew of several community members and SANParks officials who fish in the MPA of the park¹⁴⁸. The researcher spoke to several fishers who admitted to fishing in areas designated as protected or ‘no-take’ areas, but they defended their

¹⁴⁷ Interview with Enrico Bruiners, chairperson of the Tsitsikamma Angling Forum, at Stormsriver on 18 October 2010.

¹⁴⁸ During the interviewing process in the community there were frequent reference made to parks officials who engage in illegal fishing activities. The researcher could not confirm this from officials but the media have reported on such incidences and SANParks officials who have been implicated in these crimes. Refer to <http://www.environment.co.za/environmental-crime-justice-south-africa/sanparks-official-in-court-for-selling-perlemoen.html>).

positions in terms of their socio-economic conditions, regarded it as their ‘gewoonte regte’ (use rights), and felt entitled to fish and engage in these practices. While various motivations for fishers’ activities have been provided extensively in the literature – ranging from occupational satisfaction (Gatewood & McCay 1990; Pollnac & Poggie 1988), recruitment into fishing at a young age (Thiessen & Davis 1988), ritualistic practices (Palmer 1989) and fishing for economic gains (Palmer 1993) – fishermen are clearly driven by various economic, social and cultural factors (Acheson 1975). While a range of motivations are plausible for fishers engaging in ‘illegal’ practices, a respondent informed the researcher of his reasons for ‘poaching’ and highlighted the huge risks that are associated with such activities. When the interview commenced, the researcher ensured the respondent that the interview would be treated in confidential terms, considering the nature of his activities. While full names have been disclosed in this dissertation for the excerpts from the interviews conducted, the names of respondents are not provided in this section, as anonymity was assured before the interviews commenced. Outcomes from the particular interviews highlighted below will be presented in a narrative format that depicts personal, community and livelihood activities of the fisher, as well as the ‘illegal’ fishing activities reported during the interview.

7.3.3.1 Respondent 1

The respondent was born in 1961 in Covie into a family with a father who worked as a woodcutter for the saw mills. He added that the woodwork was a job to his father; he was only happy when he could go fishing. Both of his parents were born in Covie, and he believes that his grandfather was too, but was not entirely sure if his grandmother was originally from Covie or the surrounding areas. The respondent therefore only knew Covie as home and added that he has lived there all his life. He informed the researcher that he grew up at Covie, attended school there until standard 3 (Grade 5) and would go fishing with the adults during the holiday season. He added that the weekends and Easter time was especially special for the children and the community as a whole, as this was a time they would spend camping and fishing. During the interview he noted: “*ons het somma heel naweek by die seë gebly; dan vang ons vis en braai dit en almal het dit gedoen*” (we used to camp the entire weekend at the seaside; we would catch fish and barbeque and everyone did this). The respondent added that he started fishing at a young age, with his father and uncles and, in his view, he believed that it was not something to which much thought was given. He further added:

“Sommige mense het dit net gedoen as ‘n stokperdjie of omdat ons kon, ander omdat dit bygedra het tot die huis and ander omdat dit net iets was wat albei was. Ons het net geweet ons kan gaan visvang as daar ‘n behoefte was en het dit so gesien.” (Some people just did it as a hobby and as they were free to do so, others because it helped at a household level and others as a result of both of the above. We just knew that we could go fishing when there was a need and it was just viewed in that way.)

The respondent is one of the few Covie inhabitants who have remained and lived there their entire life. To generate an income, he engages in various *ad hoc* work opportunities when the opportunity arises, including bricklaying, temporary maintenance and road upgrading. Once a year he purchases a recreational permit and uses this for fishing at Nature's Valley. He added that he frequently goes fishing in the MPA of the park and highlighted the following:

“Ek weet dit word gesien as verkeerd, maar dus ‘n risiko wat ek moet vat. My kinders moet eet en as daar nie geld is vir kos nie, dan vat ek my visstok en loop vis. As dit steel is om my gesin te voed, dan steel ek.” (I know it is regarded as wrong, but it is a risk that I have to take. My children need to eat and, if there is no money for buying food, then I pick up my fishing gear and I go fishing. If trying to feed your family is called stealing, then that is what I am doing.)

The respondent added that when he goes fishing, he usually catches a few fish and this is normally what he can carry. He added that he prefers fishing alone, but informed the researcher that his brother or neighbour would frequently join him. He said that the most fish that he has caught in the MPA at any one time is probably about seven, but the most frequent number is between three and four fish. The respondent then shared some of his motivations for fishing ‘illegally’. The researcher asked the interviewee share exactly how fishers usually go about fishing in the MPA. As it would not have been feasible for the researcher to experience or witness how these activities take place, she needed to rely on the accounts provided by the respondent as to the *modus operandi* and how individuals were able to benefit from these activities. The respondent continued, adding that the only equipment he needs is his hand-line and bait, and that he only catches what he can with the limited time that he has. He added that it is difficult to catch large amounts of fish for several reasons: Firstly, it is a risk that the fishers take to fish in the MPA, and this is sometimes done in the early hours of the morning and at sites that are relatively far away from where they can easily be spotted. They have to remain practically ‘invisible’, and be able to move quickly if they needed (i.e. if there is a chance that law enforcement officers could catch them in the act). Secondly, as a result of having to move fairly quickly, it is impossible for them to carry large numbers of fish. Moreover, taking inhospitable walking routes to the fishing sites is probably the best way to stay undetected and carrying a heavy bag can therefore be difficult. Thirdly (and probably the most important reason), when the law enforcement officials find individuals fishing illegally, they are fined for trespassing and for what they have in their possession¹⁴⁹ (i.e. with regard to fish species). The respondent explained:

¹⁴⁹ This was also confirmed and highlighted during an interview with a Covie community member, Marko Barnado, who works as a law enforcement official for SANParks (interviewed at Covie on 13 October 2010).

“As Parke jou vang dan vat hulle al jou goed af. Jou visstok en wat jy ook al gevang het. Dan beboet hulle jou want jy oortree eertens, en hulle beboet jou vir elke vis wat jy met jou het. Ek was al gevang. Somtye is hulle nie so streng nie, en as dit ‘n ou is wat jou ken en hy is dalk alleen, sal hy jou laat gaan, maar as dit nou ‘n ou is en hulle is twee dan sal hy net sy werk doen en jou skryf tot op R2 000!” (If Parks officials catch you, then they confiscate all your equipment. Your fishing rod and your catch. They firstly fine you for trespassing and then for every fish you have. I have been caught before. Sometimes they are not that strict and if someone who knows you catches you and he is alone, he could let you go, but if it is two or more of them that catch you they won’t be as lenient, and are only doing their job, and will fine you up to R2 000!).

At this point the researcher asked the respondent what happened to a fisher when the fine was issued. He responded by saying that the officials would let you go and, as people are not able to pay these fines, they would go to court in Plettenberg Bay where the case is heard by the local magistrate. Accordingly, it would usually result in a warning or a reduced fine payable to the court.

7.3.3.2 Respondent 2

From interviewing the first respondent, a key factor was apparent for his actions in engaging in fishing illegally in the MPA, related to his socio-economic conditions. However, the researcher interviewed another respondent who had different motivations as to why he was engaging in ‘illegal’ fishing. During the latter interview¹⁵⁰ in Coldstream, the respondent informed the researcher that he and his son trespass and ‘illegally’ fish in the MPA. He added that it was not something that they would frequently do, but perhaps twice a week if he needed to provide for his household when alternative food or income sources were not available. When the researcher asked the respondent if this was the only motivation for fishing ‘illegally’ in the MPA, the respondent explained that he was not going to seek permission to go fishing (when the need arose), as this would not be granted, and that the government treated them unfairly. The researcher asked the interviewee how he believed he was treated unfairly. He responded that it was a result of his family and many others of the area being stripped of their rights and dispossessed of their land. He added that many people in his community and surrounding communities were living in poverty, some with very little to eat; yet, the government “*weerhou kos uit hulle monde*” (kept food from them). During the interview he added: “*Ek voel net sleg want ek moet soos ‘n dief maak, maar behalwe dit, vat ek net wat my toekom*” (I only feel bad, as I have to act as a thief, but apart from that, I just take that to which I am entitled).

¹⁵⁰ Interview with a respondent from Coldstream who was born at Covie and lived there but moved during the 1970’s to Coldstream where he is still residing (interview at Coldstream on 12 October 2010).

The reasons for illegally fishing between the two respondents were different: The first placed emphasis on his socio-economic circumstances and the risks taken while fishing ‘illegally’, but substantiated this with the fact that he needed to provide for his family in times when alternatives were few. The second was filled with resentment and anger. His emotions and reasons for fishing ‘illegally’ were evident throughout the interview and this was oriented towards the park’s management and mandate. He conveyed little guilt for his actions and, during the interview, he did not even regard the illegal fishing as a risk. Instead, he remarked that he ‘has not been caught and will never be caught’.

While the management approach of the park is underwritten by a range of policies and decision-making that aims to uphold the *status quo* of the park, invasions (as highlighted in section 7.2.2) and ‘informal’ fishing activities are evidence of the discontent that local communities adjacent to the park have with these decisions. In their studies on perceptions of the ‘no take’ fishing policy in the Tsitsikamma, and in evaluating community-based conflict-resolution strategies for management of the park, Watts and Faasen (2009) have concurred that tensions between management authorities and the local communities of the Tsitsikamma are rife. This, Watts & Faasen (2009) add, is largely exacerbated as SANParks does not implement or uphold communication strategies between officials and local communities and little scope exists to include local communities in participatory processes in managing the park. During discussions with local community members for the current study, the researcher found similar attitudes from members of these communities towards the parks authorities and management measures. This discontent was apparent and, as described above, some do not regard their activities as ‘poaching’, while others admitted that they know of people who engage in these activities, but will not report them to the authorities¹⁵¹. Community members and fishers alike do not regard the current management and *status quo* as legitimate. Rather, they refer to historical and customary use practices as evidence of their rights to access fisheries resources and attach legitimacy to these claims.

Historically, many rural fisher communities in South Africa were engaged in ‘illegal’ fishing as a source of food security and income. Post-apartheid policies and legislation have, in some cases, resulted in stricter limits on resource use and have meant further restrictions on rural fishers’ activities. However, despite not having formal rights, fishers continue to fish as a result of the reasons highlighted above. While post-apartheid policy planning and implementation in South Africa have advocated greater equity and access to natural resources, *inter alia*, the impacts and benefits of these policies have, in some instances, been slow. Through the land reform processes that have been instituted in Covie and Ebenhaeser, there has been a distinct focus of restoring rights to land and the popular discourse for advocating greater access to natural resources. However, the issue of access

¹⁵¹ Interview with Covie resident and fisher, at Covie on 14 October 2010.

rights has been complex. In Covie, there has been no compensation for the loss of access to the commonage land that was included in TNP (Conway & Xipu 2005). This land afforded the community relative ease to access fishing sites; however, the inclusion of this land into the park has meant that it was no longer possible for the community to do so, as fences were erected. As a result, this community has had strong resentment towards the park for infringing on these perceived rights. Many believe that as this incorporated land belongs to Covie; that this entitles them access to the sea (even if designated as an MPA) and, even though the park's officials may view their activities as 'poaching', that community members are simply exercising their rights¹⁵².

¹⁵² Interview with Covie resident and fisher, at Covie on 19 October 2010.

7.4 INDIRECT MECHANISMS OF ACCESS AT COVIE

In this section, indirect mechanisms of access relevant to Covie are presented. The role of rights, more notably, ‘informal’ rights based on references to historical and customary use practices of access to fisheries resources, have been evident and strongly drawn on by local fishers and community members to substantiate contemporary access claims and practices. Once again, by applying the preliminary conceptual framework, mechanisms drawn on to benefit or make claims for access are presented from the results of this case study.

7.4.1 Access to knowledge

While conducting interviews with community members and others who left years earlier, the researcher learnt that, historically, the fishers had their own local knowledge about the resources harvested, and that locals norms related to fishing were observed by the fishers. During an interview in Hermanus, Western Cape, with Mr Cecil Roberts¹⁵³, who grew up at Covie, the interviewee highlighted some of these norms and activities. Mr Roberts shared these in an interview with the researcher when the question was posed on how fishing was organised and what local knowledge and norms were associated with fishing at the Covie settlement. Excerpts of some of Mr Roberts’ responses are highlighted in the section below, which provides context to his upbringing and life in Covie.

Mr Cecil Roberts was born at Covie in 1934. He grew up there and went to the local church school which catered for children up to the sixth grade. Mr Roberts noted that his father was a fisher and also grew a few crops on the property on which they lived. He remembered that his father had taught him how to fish. He added that his father was one of four shareholders in one of the Barnado family’s “*seenskuite*” (boats). He recalled that these boats used to set out from the “Soutrivier” mouth (where the little fisher settlement village was established). Here at the mouth, a boathouse was built, and that the area was bustling with activity in earlier years before various changes occurred. Mr Roberts informed the researcher that while many people engaged in forestry activities, there were many others who were actively involved in fishing. When asked about how fishing activities were organised, he noted that fishing was largely influenced by weather conditions, which either made it possible or impossible to go out to sea. However, when conditions looked favourable, this would be communicated the evening prior to a fishing trip and someone (usually the skipper) would blow loudly once on a horn after observing the sea conditions. This, as known by all community members, would signal that the “*seënskuite*” would go out the following day. When asked how the skipper could determine whether the weather conditions or sea would be favourable for fishing, Mr Roberts

¹⁵³ Interview with Mr Cecil Roberts, former Covie resident interviewed at Hermanus, Western Cape on 1 October 2010.

added that he was not sure how they knew, but the fishers believed that if you were a fisher, that you could “*lees die seë*” (read the sea). In the morning, the men would make their way to the “*Soutrivier*” mouth; there they would wait for each other. If not enough men were present, then they would not go out. This was a rule among the fishers. Mr Roberts explained that the “*seënskuite*” were relatively big boats and could accommodate 5 men; therefore, if too few men were present, then they would not go out. He added “*daar was eenvoudige samewerking onder die vissers en almal het verstaan dat jy nie alleen kon werk nie*” (there was simple co-operation among the fishers and they all understood that one could not work alone). Furthermore, if fishers who regularly worked on the “*seënskuite*” were not present, and there might have been others who were willing to go out to sea, then these individuals were given the opportunity to do so. They would therefore be able to join on a boat trip to work for a share of the fish if one of the shareholders (of the boat) or the skipper agreed to this.

During the interview, Mr Roberts said that fishers who regularly worked on the “*seënskuite*” regarded fishing as a very serious activity. He added that it was not recreational and the men always spoke of the associated dangers. He explained: “*as die weer, en net as die weer dit toegelaat het, het die seënskuite uitgegaan seë toe en dit was meestal 10 dae of net meer as 10 dae per maand, visvang was nie sport nie, dit was vir ‘n bestaan*” (when the weather conditions were favourable, and only then the boats went out to sea. It was therefore about 10 or just more than 10 days per month, fishing was not recreational, it was to make a living). During interviews held in the community, respondents often commented on the sea and that, at times, conditions could be hostile. Reference was frequently made to the Covie boat that capsized and the fishers who lost their lives¹⁵⁴. Mr Roberts recalled that on the fishing trips he was able to join in, and that the fishers on the boats caught various types of fish. He added that hand-lines were most frequently used on the boats, and while they had their own way of doing things, they had rules about the size of the fish caught and when to catch what type of fish. The first rule about size, he explained, was that an undersized fish smaller than a male adult’s middle finger was not to be caught. This rule was not only applicable to the men on the ‘*seënskuite*’, but for people who were fishing from the rocks. It was a rule known by everyone. Secondly, the type of fish caught largely depended on the season. Mr Roberts noted that in winter, for example, they concentrated mostly on “*galjoen*” (*Dichistius capensis*), and they would frequent the areas where they knew good catches of this species would be found. In the summer months, the “*red Roman*” (*Chrysoblephus laticeps*) or “*silvervis*” (*Argyrozona argyrozona*) were caught; here, fishers knew where good catches could be found. He added though that “*Elf*” (*Pomatomus saltatrix*) was caught throughout the year. When asked why they operated in this way, Mr Roberts noted that this was just the way that things were and the fishers thought that by fishing in this manner, they gave the resource a chance to rejuvenate in numbers. He added that as fishing had been a part of his

¹⁵⁴ Informal conversation with two Covie residents, Floorie Whitebooi and Irene Barnado during September 2009, who made comments about the boat, Daphne, that capsized and Covie fishers who lost their lives in 1953.

upbringing, he believed that the knowledge of any fisherman could only be gained from the individual's own experiences of engaging in the activity or growing up in a fisher community. Knowing the resource is key for a fisherman; he remembered a saying that his father had always reiterated: “*Jy vat net van die seë wat jy nodig het*” (You only take from the sea what you need).

Mr Roberts' account encompassed some of the local beliefs and norms exercised by the fishers of Covie. During a focus group session, the researcher found that fishers still made reference to this way of fishing and the principles that were historically known. While some fishers could not fully expand on how they or the fishers before them had acquired this knowledge, the common response was largely that these were how things were done in the past, or that this was age-old practice passed on from the one generation to the next¹⁵⁵. While the role of fishing in this community was not only restricted to men, this study found that women played a key role in fishing, and even taught their children to fish, which typifies the passing of knowledge from one generation to the next. Additionally, women, like their male counter parts, needed to possess the ‘know how’ to engage in fishing activities. The coastal areas of the Tsitsikamma are characteristically rocky and steep;¹⁵⁶ women needed to be vigilant and navigate this terrain in order to get to fishing sites to be able to fish and derive benefits. As described in the previous chapter, the undertaking of fishing activities requires the user to possess some knowledge of what the extractive nature of this activity entails.

From the interview, the relevance and local knowledge of resource sustainability is how fishers believed they were contributing to sustaining fisheries resources; this was displayed in their beliefs of not catching undersized or young fish and having seasonal fishing preferences in relation to species caught. Personal beliefs, such as Mr Roberts' father's saying of ‘only catch what is needed’, can all be considered as ways in which fishers believe that they sustain the resource.

7.4.2 Access to technology (equipment)

While the interview with Mr Roberts highlighted that, historically, the use of ‘*seënskuite*’ was key in terms of benefitting from fishing, contemporary fishing practices do not involve the use of a boat; however, fishers need access to a fishing rod, bait and perhaps a backpack or bag for carrying what may be needed on a fishing trip. Interestingly, the researcher was also informed during an interview with two fishers¹⁵⁷ that a mobile phone is also a device that a fisher could benefit from, especially fishing in the protected area. While the mobile phone is not involved in the actual harvesting or extractive nature that fishing entails, it may assist the fisher if there is a need for it. While this was

¹⁵⁵ Comment captured during focus-group session with Mr Alexander (Snr) (former fisher), Michael Alexander (fisher), Archie Plaatjies (fisher), Mr Pam Alexander (former fisher), Lorian Alexander and Gwen Plaatjies at Coldstream in 19 October 2010.

¹⁵⁶ Except for a small sandy beach at Nature's Valley: “the shoreline of the park is rocky and it abuts a steep high coastal escarpment” (SANParks 2008:17).

¹⁵⁷ Interview with two fishers (who illegally fish in the MPA) at Coldstream on 19 October 2010.

related to the researcher in a more humorous manner by the fishers, one of them added: “*jong as jy agterkom of hoor parke se ouens is in die rondte dan kan jy darem ‘n ander ou wat met jou loop waarsku en hom ‘n boodskap stuur hulle is in die rondte. Dit het al. gebeur, maar ons kon vining weg kom*” (well, when you notice or hear that parks officials are close by, then you are able to warn your friend who is fishing with you by sending a message to let him know they are in the area. This has happened to us, but we managed to get away fast). While this technology may not directly be utilised for the actual (extractive) activity of fishing, the fishers believed that it may also be useful in the event that there is a need for help in an emergency, as fishers who fish ‘illegally’ have to sometimes use dangerous and difficult routes to get to fishing sites. Therefore, the role of technology such as mobile telephones, is considered by Ribot and Peluso (2003) as “technology that facilitates or upholds ‘illicit’ access”.

From the interviews conducted, it was concluded that while boats such as the ‘*seënskuite*’ were historically utilised for deep-sea fishing and to catch large amounts of fish, for many, including the women, fishing remained an activity that was undertaken with very low gear technology (i.e. a hand-line or stick), often from the rocks. The excerpts below, from an interview with Mr Joey Boezak, who now resides at Coldstream, highlight this. He spoke of his mother, whom he regarded as a fisher woman, and her activities, as well as the ordinary stick and wire that she used for fishing. He had the following responses to questions posed:

Researcher: “*En die visvang? Was dit vir die huis of verkoop gewees?*” (And fishing? Was it for household use or selling?)

Joey Boezak: “*Ja, ons het nooit vis verkoop of so nie, dit was maar net vir die huis. Ons vang ook nie wat ons vis veel het nie. Dit was maar vir die huis se gebruik. Daai tyd het ons mos nie yskaste en sulke goed gehad nie ... Net genoeg vir die huis.*” (Yes, we never sold the fish, it was just for household use. We never caught more than needed. It was only for household use. Back in those days we did not have refrigerators ... Only caught enough for household use.)

Researcher: “*En Oom Joey se ma, u sê sy het sy ook self af na die visvangplekke gegaan?*” (And, about Uncle Joey’s mother, you say that she went on her own to the fishing sites?)

Joey Boezak: “*Ja, my ma het gereëld visgevang. My ma het ook taamlik vis gevang.*” (Yes, my mother also went fishing regularly. My mother could catch a pretty decent amount of fish.)

Researcher: “*So sy’t nie gewag vir die manne nie?*” (So she didn’t wait on the men?)

Joey Boezak: “*Nee, partymaal dan gaan sy in, met stok en draad.*” (No, sometimes she went on her own, with a stick and wire.)

Researcher: “*Sy het net die stok en die draad gevat?*” (So she just used a stick and wire?)

Joey Boezak: “*Die stok en die draad, ja.*” (Yes, a stick and wire.)

The role and reliance on low-gear technology at Covie (historically and in contemporary fishing practices) has played an important role in deriving benefits, and the use of sophisticated equipment has not been a determining factor in fishing activities. As the interviews presented above have highlighted, fishing was undertaken by most members of the community and rather viewed as an activity resembling community effort and which reinforced social relations.

7.4.3 Social relations

While technology plays a key role in extracting resources and deriving benefitting, other investments in social relations are also useful. Where common pool resources are the resources in question, investing and maintaining a relationship or standing with fellow community or resource users may be beneficial in terms of drawing on or securing benefits from access. This section highlights how maintaining social relations in a historical, as well as contemporary, context has been advantageous to people in terms of benefitting from fishing activities.

From the interviews undertaken by the researcher and others (Faasen & Watts 2007; Faasen 2006) there is a sense of community that emerges from people’s description of life at Covie from an historical, as well as contemporary, perspective. This was a feature that was evident from many interviews, where people spoke of the “*goeie gesindheid*” (good understanding) or how people related to each other. While it is acknowledged that people’s recollections of ‘the way life was’ are only their own personal reflections, these recollections provided the researcher with some insights or clues about what contributed to ‘good’ relations among people. As this was a common theme that was highlighted throughout the research process, the researcher wanted community members to expand on what they believed contributed to these relationships, and community bonds, which some respondents added still exist today. As part a small community where everyone knew each other, interviewees believed that it was how activities within people’s livelihoods, especially those to enable food security, meant that they had to depend on each other at various times¹⁵⁸. Again, reference to an interview conducted in Covie highlights these intricacies of community life, and how these contributed to benefitting from fisheries resources. As fishing played, and continues to play, a key role in facilitating food security for some, there were frequent comments that it was the activity of fishing that was predominantly

¹⁵⁸ Interview with Mr Flippie Windvogel and Mr Wesley Pedro at Stormsrivier on 2 December 2009.

responsible for this¹⁵⁹. The excerpts from an interview conducted with Covie residents emphasise these social relations and community interactions.

7.4.3.1 Interview with Ivy Janse

Ivy Janse, born at Covie, recalled only coloured and white people living at Covie. She noted that her earlier memories of the community were of people living together; many people, but even with so many people, she added, there was few instances of conflict. She added that they might have only fought with each other when they had been socialising too much, and may have had a difference of opinion about something¹⁶⁰! During the interview, she was asked if she could recall what people engaged in to make a living. To this she responded that people worked in the forests and that the growing of crops was also undertaken. She explained:

‘Hulle’t geplant. Patats, aartappels, bone ens. En as hulle so dan die kosse geoes het, of ons gaan hulle help miskien, gaan ons hulle help. Dan moet jy die patats en goete en aartappels op tel en sulke goed het ons gedoen.’ (They planted sweet potato, potatoes, beans, etc. And when they harvested these, we helped. Then you worked by picking up the sweet potatoes and potatoes. That is what we did).

She added that in return for helping with the harvesting, they were paid with a container filled with potatoes or sweet potatoes.

Researcher: *“So u was betaal in terme van groente?”* (So you were paid with some of the harvest?)

Ivy Swartz: *“Groente, ja.”* (With vegetables, yes.)

Researcher: *“En daar was nie geld betaal nie?”* (And there were no payments of money?)

Ivy Swartz: *“Nee, daar was nie geld betaal nie. Maar ons het goed geleef. Ons het klomp goed gehad en as die mense, die mansmense daai jare dan gaan hulle nou nog see toe ook. En vang vis.”* (No there was no payment in the form of money. But we lived well. We had enough to get by and, back then, the men also went out to sea to fish.)

¹⁵⁹ Comment made by Mr Flippie Windvogel during interview at Stormsrivier on 2 December 2009.

¹⁶⁰ Here the interviewee was referring to people socialising with alcohol for instance and while being under the influence may have had a difference of opinion with someone which could have ended in a dispute being settled through the use of fists.

During the interview she added that people who did not work in the forests or do much planting, they were especially engaged in fishing. The way in which the interviewee described the Covie community and its activities saw common responses from other interviews and focus group sessions conducted. These common responses indicated that Covie was a close-knit community who depended on each other¹⁶¹. It is likely that, as a result of being located relatively far from major towns and being isolated in the middle of the coastal zone and forest, people exerted greater dependency on each other. Furthermore, as a small community, many people were in some way or the other related to each other; therefore, the strong community bonds formed were largely as a result of family ties. In a focus group session with four respondents, the theme of contemporary social relations was highlighted, as well as the manner in which people maintained investment in these in order to benefit. During this session, which included three women and one man¹⁶², the respondents talked about how the community would ‘stand together’ and, even if they knew of people going to fish illegally, for instance, they would not report this to the park’s authority. To this, one woman remarked: “*Ek sal nie my buurman of enige iemand anders rapporteer nie. Môre, oor môre het ek weer sy hulp nodig, dan hoe kan ek die man in die oë kyk?*” (I would not report my neighbour or any other person. I might have to call on their help one day and how do I do this without looking them in the eye?).

The only man present during the session laughingly remarked that the other two women are his wife’s friends, and when he goes fishing (in the MPA or at the recreational sites), that his wife would at times share some of the fish that he caught with these women and, if they should ever report him (or say something about his activities), that he and his wife would never share fish with them again. As highlighted earlier when ‘informal’ rights and access practices were discussed, the motivations or reasons for not reporting or condemning the actions of fellow community members may be due to the fact that ‘relative compliance’ is observed (Meinzen-Dick & Nkonya 2005). In the case of Covie, further motivation could be a result of the long-term resentment that communities have towards TNP management and its mandate¹⁶³. Furthermore, motivations can also be as a result of not viewing these practices as ‘illegal’ or as ‘poaching’; outcomes from interviews have stressed that some community members regard these activities as intrinsic to their history, livelihoods, identity and culture.

¹⁶¹ Interview with former Covie resident, Wesley Pedro at Stormsriver on 18 October 2010.

¹⁶² Focus group session held at Coldstream on 12/10/2010. As much of the discussion around fishing was based on illegal activities, the researcher has refrained from using names of the four participants present.

¹⁶³ See Watts and Faasen (2009) for outcomes from research undertaken in Tsitsikamma, where conflict-resolution strategies were explored for possible interventions to foster better relationships between communities and the park’s management.

7.4.4 The role of identity and culture

While the researcher spent time in Covie and the surrounding communities, reference was frequently made to the “*beleid van Covie*” (policy of Covie). While it was explained to the researcher that what was meant with this “*gesegde*” (saying) was that it was the planting of sweet potato and fishing which together provided the basic foodstuffs on which the community depended. As a result, the community was locally renowned for this; to the local inhabitants and surrounding communities, Covie was synonymous with growing sweet potato and for locals engaging in fishing activities¹⁶⁴. While this community has had to adapt and diversify their access practices as a result of external forces that have brought about change, the role of fishing has influenced the creation of particular individual as well as community identity.

It has been recognised in the literature that fishing in many communities sees strong links to fishing spanning many generations, and its value is seen beyond the means of earning a living (i.e. economic values) (Béné & Friend 2011; Sowman 2006; Johannes 1981). Furthermore, anthropological research in fishing communities, investigating the ‘sense of place’, has explored these relationships. While fishing takes place at sea (or the coastal or estuarine environment etc.), other activities related to fishing such as boat and net maintenance, the selling and trading of fish, etc. takes place on land (Urquhart & Acott 2013). Therefore, the activities associated with fishing create a particular identity or characterise an area as a result of these activities. While the local ‘policy of Covie’, for instance, included fishing as a key trait characterising this community, other factors included the establishment of the boathouse at the Saltriver mouth, activities such as fish trading and selling, as well as holiday and weekend fishing activities that were especially significant for locals in defining what is meant by ‘fishing community’¹⁶⁵.

While identities are not static, but characterised by changing circumstances and therefore altered through time, they have represented a mechanism drawn upon to substantiate access claims at Covie. While the activity of fishing has been linked to identity formation, it is acknowledged in this research that it is not the only aspect that constitutes individual identity. However, the role of identity as a mechanism and the practice of drawing on this aspect to substantiate access, as found in this study, is key. It is acknowledged that fishers do not only define themselves through fishing, but rather see themselves as members of a community or particular religion/faith, or citizens of a region or country, and these factors are all relevant for identity formation. However, for the Covie community and those former community members residing in adjacent communities, maintaining the identity of fishers and fisher communities is an important mechanism in claiming access. Community members, like the

¹⁶⁴ Interview with John Barnado, former Covie resident, at The Craggs on 13 October 2010; Irene Barnado, Covie resident, interviewed during September 2009 and 13 October 2010.

¹⁶⁵ Comment captured during focus group session with Mr Alexander (Snr), Michael Alexander, Archie Plaatjies, Mr Pam Alexander, Lorian Alexander and Gwen Plaatjies at Coldstream on 19 October 2010.

Ebenhaeser community, have turned to the past and emphasise the role of historical fishing, how this has shaped their access to fisheries resources and associated practices, as well as individual and community identity. Dalby and Mackenzie (1997) add that the “past often plays a very important role in the construction and collective identities as it can help make sense of and confront future challenges”. This could be seen in comments such as:

“Ons was geleer dat dit was eintlik ‘n tradisie hier op Covie. En visvangs was meestal vir huisgebruik, wel meeste van die tyd was dit vir huisgebruik. Nie om te verkoop nie. Die mense het so gemaak, as daar een goed gevang het, en dis te veel vir hom, dan gee hy vir die ander. Die wat nou nie kon vang nie.” (We were taught that it was actually a tradition at Covie. And fishing was mostly for household use, well most of the time it was for household use. Not to sell. People use to do the following, if someone had a good catch and it was too much for him, then it would be given to others. To those who were not able to fish.¹⁶⁶)

“Ons histories regte hier moet erken word.” (Our historical rights here should be acknowledged.¹⁶⁷)

“Visvangs kom al van die oertye af an.” (Fishing is an age-old practice.¹⁶⁸)

“En ons kultuur en ons historiese regte is van ons af weggeneem. Dis (visvangs) in ons mense se bloed. Ons mense gaan nog steeds see toe.” (Our traditions and historical rights were taken from us. It (fishing) is in our people’s blood. Our people still go out fishing.)¹⁶⁹

Additionally, from the household survey undertaken there were also some dominant responses that highlighted some of the motivations for people becoming involved in fishing activities or how they perceived these as factors that contribute to their identity as a fishing community. These responses are listed in the table below:

¹⁶⁶ Interview with Percy Barnado, Covie resident, at Covie on 14 October 2010.

¹⁶⁷ Interview with Kenwyn Barnado, Covie resident, at Covie on 21 October 2010.

¹⁶⁸ Interview with Percy Barnado, Covie resident, at Covie on 14 October 2010.

¹⁶⁹ Interview with Enrico Bruiners, chairperson of the Tsitsikamma Angling Forum, at Stormsrivier on 18 October 2010.

Table 14. Primary reasons for getting involved in fishing (household survey undertaken in 22 households at Covie during October 2010)

| Reason | <i>n</i> (%) |
|--|--------------|
| Taught as a child by parent or family member | 15 (68.2) |
| Needed to help support the household | 4 (18.2) |
| Part of community life | 3 (13.6) |
| Total, <i>N</i> | 22 (100) |

Ribot and Peluso (2003) indicate another example of identity-based access that bears relevance to this particular case study: “when rights and claims are attached to or explicitly detached from particular localities or professions” (Ribot & Peluso 2003:171). Local users are often completely excluded from nature reserves, particularly if they intend to extract resources (Neumann 1998; Ribot 1995), while scientists and conservation officials enjoy privileged access to the resources and may even extract some for the purposes of their work (Ribot & Peluso 2003). In the Covie case study, this example of identity-based access sees local communities being excluded from accessing fisheries resources in the marine reserve area of the TNP, but for various scientific purposes, shore-based angling is permitted. “The park with its protected marine environment and large fish stocks provides an important study area for fish research” (SANParks 2008:33). Some of the research carried out focuses on the biology and ecology of commercially and recreationally exploited fish species, and investigates the long-term temporal and spatial patterns which may determine quantifiable thresholds of potential concern (TPCs) (SANParks 2008). Scientists and researchers, therefore, have privileged access, which, according to Ribot and Peluso (2003), translates into direct benefits as a result of access to capital (research grants) and authority (permission granted from SANParks). In these cases, the scientists’ form of knowledge production and practice are also viewed as having greater legitimacy in policy formulation and the management of resources compared with the knowledge of local resource users; this enhances the scientists’ abilities to gain, maintain and control the access of others.

7.5 SUMMARY

In this chapter, findings from the Covie case study were presented. The preliminary conceptual framework was applied and outcomes from the fieldwork undertaken at this site were reported. The Covie community and its livelihood activities have evolved from a traditional context to one where livelihood activities, such as fishing, have become completely prohibited at historical fishing sites. These changes were due to various political and conservation interventions in the form of land dispossession, relocation and the establishment of a national park (TNP). The governance structure is therefore focused on maintaining the *status quo*, which resembles a technocratic, top-down resource-oriented approach. In light of the various national and international commitments to which South Africa is bound, in addition to a progressive Constitution that acknowledges human rights as fundamental to all other rights, balancing novel objectives and commitments are proving to be challenging in the face of increasing calls and claims for access to natural resources.

Application of the preliminary conceptual framework to the Covie case study has demonstrated that the categories of ‘direct’ and ‘indirect’ mechanisms are somewhat blurred, with varying degrees of overlap and aspects of legal pluralism. While ‘informal’ fishing practices in this regard have been legitimised by various references to customary practices, local resource users have demonstrated that they are operating within a plural system, as recognition and reference to customary practices is drawn on to substantiate contemporary access practices. These references, or historical narratives, are evident and overlap with other mechanisms of access including knowledge, identity and culture. However, by highlighting both ‘direct’ and ‘indirect’ mechanisms of access, a significant feature has the value that historical access practices play and continue to influence and shape contemporary access practices and claims to fisheries resources.

CHAPTER EIGHT

DISCUSSION: KEY PROCESSES AND MECHANISMS FOR ACCESS TO SMALL-SCALE FISHERIES RESOURCES IN SOUTH AFRICA

8.1 INTRODUCTION

The aim of this chapter is to consolidate and analyse the information that has been collected in this study. A revised conceptual framework for understanding access is presented here, based on empirical research and the key concepts and theoretical ideas introduced in *Chapter Two*. The intention here is to expand on the key processes and mechanisms that are relevant for local resource users to gain and maintain access to fisheries resources, as well as how these mechanisms are used to substantiate claims made for access. The aim is to highlight the importance of these mechanisms in the broader context of access in small-scale fisheries in South Africa. As access mechanisms maintain an empirical focus (Ribot & Peluso 2003), the relevance of some mechanisms has been identified as more prominent in one site compared with the other and, in some cases, overlap has been observed between mechanisms. The manner in which these outcomes are discussed in this chapter is based on the relevance of certain aspects of key mechanisms harnessed at each case study site (i.e. greater detail is provided for certain mechanisms per site).

The first part of the discussion explores how governance processes and interactions impact on mechanisms that local resource users harness in their efforts to benefit from access. What has emerged from the research in the two study sites is that these governance processes and interactions have been, and continue to be, shaped by past and current socio-political factors, as well as international governance processes and rhetoric. While local resource users may draw on a number of mechanisms to gain or maintain access to resources, the use and effectiveness of employing particular mechanisms is influenced by prevailing governance processes, including policy frameworks, institutional arrangements, management approaches, the values and principles and interactions across a range of governance actors (both state and non-state). Thus, these governance processes and interactions play a significant role in determining how access to resources is gained, as well as how these processes further mediate and influence access practices. In the second part of the chapter, key mechanisms that local resource users have employed in the two study sites to gain, maintain or make claims for access to fisheries resources, are discussed. Those mechanisms included in the preliminary framework (refer Figure 3) which were found not relevant to the access analysis conducted in the two cases are thus not addressed. While discussing the findings of the research, it is important to reflect on the theoretical ideas underpinning the preliminary conceptual framework introduced in *Chapter Two*. These concepts, together with the case study findings, have informed the development of a revised conceptual framework. This revised conceptual framework for understanding access in traditional small-scale fisheries contexts is presented in Figure 21, overleaf, and is discussed in the sections that follow.

A conceptual framework for understanding access to fisheries resources in small-scale fisheries

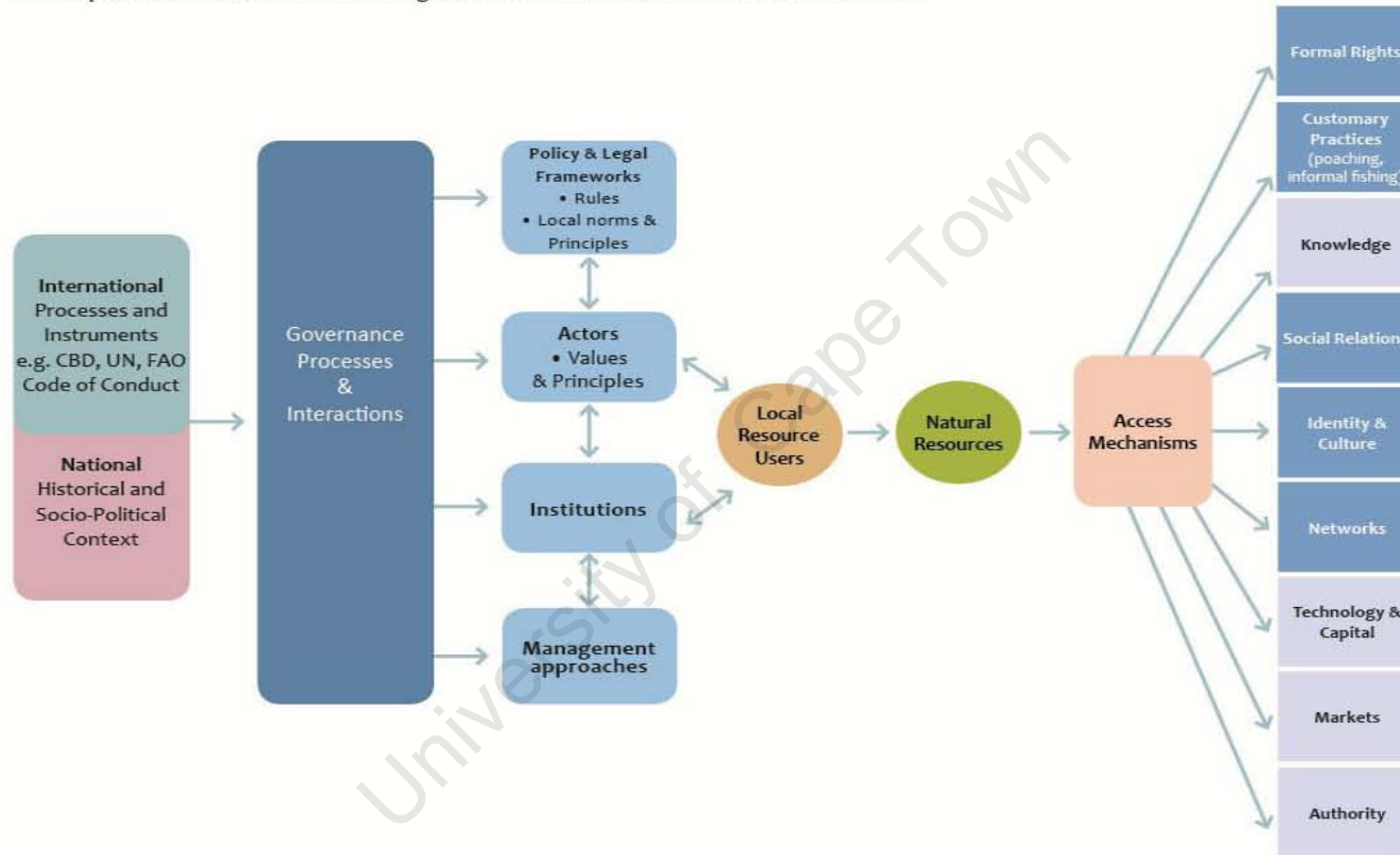


Figure 21. A conceptual framework for understanding access to fisheries resources in small-scale fisheries.

By drawing on the preliminary framework introduced in *Chapter Two*, this study set out to identify and establish the key processes and mechanisms that play a role in access to fisheries resources in South Africa. The focus has been on two small-scale fisher communities, Ebenhaeser and Covie. In the former, access to fisheries resources is regulated, but faces potential threats and restrictions, while in the latter, historically, access to fisheries resources played a fundamental role in livelihoods, but access to traditional fishing sites has been prohibited as a result of conservation initiatives. Therefore, in both cases, local resource users draw on narratives and make reference to historical use and customary practices to legitimise claims for access, as well as contemporary access practices, which include activities that have been deemed ‘illegal’ in terms of statutory provisions. As highlighted in the results chapters, fishing practices have a long history in both communities; this dependence is still evident and continues to influence and shape contemporary access practices.

An understanding of access in small-scale fisheries requires an understanding of the historical as well as socio-political context that shapes access. In South Africa, the evolution and application of formal law, as well as post-apartheid policies which aim to be equitable and just, are all important factors that influence access, but these need to be contextualised. How the fishery and access to resources are governed is fundamental to this understanding. While an analysis of governance in a local context can enhance the understanding of key access processes, it is not the only context that should be considered. Access to natural resources, harvesting practices, sustainability issues, governance, and associated challenges at a local operational level are influenced by processes and events occurring at an international level. Therefore, various external global governance processes – such as the development of various international instruments concerned with enhancing sustainability practices and the protection of ecosystems, as well as those concerned with the protection of the rights of indigenous peoples – have a bearing on mechanisms applied locally. While the framework presented here outlines key mechanisms employed in order to gain access in the context of small-scale fisheries, the methodology employed and key mechanisms identified may have broader applicability.

8.2 THE ROLE OF GOVERNANCE PROCESSES AND INTERACTIONS IN ACCESS TO SMALL-SCALE FISHERIES

8.2.1 Influence of international governance processes and norms

Fundamental to this research has been the realisation that processes of governance play a critical role in determining access within a fishery. As this study adopted the wide-ranging definition of governance – i.e. that it is a process rather than a fixed state, and includes a range of actors and institutions – it is recognised that governance is more than management or the enforcement of rules by the state. Furthermore, in this study it is contended that a governance system should not only be

judged by its present abilities, but rather by the range of possibilities that can exist under the right conditions (Torfing *et al.* 2012; Kooiman *et al.* 2005; Jentoft 2004). This view of governance would be akin to how access is understood in this study; i.e. comprising more than formal rights and defined by the range of mechanisms employed by resource users to facilitate access.

The conceptual framework highlights that local resource users' access is influenced by governance systems and processes which, in turn, are strongly influenced by international governance processes and rhetoric. For example, international soft-law instruments that are concerned with advancing sustainability approaches and practices (e.g. Agenda 21), as well as international conventions that focus on the conservation of biodiversity (e.g. the CBD), the sustainable use of biological resources, and the fair and equitable sharing of benefits from these resources, all have an influence on policies and rhetoric governing biodiversity conservation that affect implementation at a local operational level. South Africa's environmental governance frameworks are underpinned by key principles associated with democracy, equality, equitable access, sustainability, social justice and public participation; this demonstrates the country's commitment to (at least at a rhetorical level) international environmental governance norms. Furthermore, as discussed in *Chapter Four*, South Africa has entered into various multilateral environmental agreements (DEAT 2006) that require adherence to these norms at policy and operational levels.

However, the translation of the norms and standards embedded in these international frameworks and instruments to a localised context is proving challenging. These challenges are usually associated with, *inter alia*: differences in values and principles of governance actors as well as in approaches to environmental and conservation management; issues of legal pluralism; striving to achieve balance between sustainability objectives and participation in decision-making processes by local resource users. From the Ebenhaeser and Covie case studies these differences in values have been evident as well as different objectives with regard to management of natural resources. These challenges have made interactions between stakeholders difficult and tensions have been evident. Where norms and standards are not well adapted to the local context, social injustices may arise or be exacerbated (Hauck 2008; Hernes *et al.*, 2005). The section below draws attention to these challenges, in relation to the outcomes of the case studies, and to access practices in the local South African context.

8.2.2 Role of the socio-political context on governance: 'New rhetoric, old paradigms'

As discussed in *Chapter Four*, historically, South Africa's environmental discourse has largely been driven by state-centric and resource-oriented approaches, with less attention paid to aspects of equity, inclusivity in terms of decision-making, and the adoption of more people-centred approaches to resource governance. Conservation values have, therefore, largely been the core focus of natural resource governance, with protectionist approaches, such as those adopted historically in the

Transvaal (highlighted in *Chapter Four*), serving not only the terrestrial conservation agenda, but also the socio-political considerations of the time. These terrestrial preservation examples, inevitably adopted for marine areas and reserves such as MPAs, were seen as a favourable means for regulating riverine and maritime commons (Sowman *et al.* 2011; van Sittert 2003).

Across the world and in South Africa, the last four decades in fisheries governance has been dedicated to conservation objectives and efforts to protect and rebuild marine areas and their dwindling resource base (Sowman *et al.* 2011; Berkes *et al.* 2001; Pauly *et al.* 1998). A major response to address these international trends has been to designate MPAs, which some claim has reached ‘pandemic proportions’ (Kolding 2006). In South Africa, the commitment to a plethora of regional and international obligations has seen reluctance to deviate from these trends and, despite post-apartheid reform and rhetoric, the old paradigms and approaches to governing marine commons are still prevalent. This is displayed in beliefs, especially from marine scientists, that MPAs are ‘the backbone of South Africa’s marine conservation strategy’ (Lemm & Attwood 2003:3); although this view is not equally shared by all fisheries scientists (Edwards *et al.* 2008). By 2009, South Africa had declared 20 MPAs, covering 21.5% of its 3 000 km coast; of these, 9.1% were classified as no-take zones (Sowman *et al.* 2011). MPAs with no-take zones are especially challenging to manage, as seen in the Tsitsikamma MPA, where ‘illegal’ fishing occurs despite restrictions. These challenges remain amid the number of policies in South African legislation, drawing attention to the need for communities to share in the benefits of protected areas (NEM: PAA), gain equitable access to resources (NEM: ICMA and MLRA), and participate in management and decision-making relevant to coastal and marine resources (NEMA, NEM: BA and NEM: PAA) (Sowman *et al.* 2011). While there is acknowledgement in these policy frameworks that the socio-economic needs of communities should be recognised and incorporated into MPA planning and governance in South Africa (Lemm & Attwood 2003; Beaumont 1997; Hockey and Branch 1997), there is limited evidence of this happening on the ground (Sunde & Isaacs 2008). Examples of successful MPA governance processes are few. In the two cases studied in this research, plans proposed for declaring an MPA at the Olifants River as well as the TNP MPA have seen the same old challenges commonly observed with MPAs. As a result, in both cases the current governance systems, including the values and principles guiding decisions, the rules to manage the system as well as the institutions that underpin these systems have been challenged. There is clearly a disjuncture between the vision of those governing the system and those that use or value the system. While post-apartheid policy frameworks – the NEMA (1998), the NEM: BA (2004), the MLRA (1998) and the Coastal White Paper in particular – have all required a fundamental change in approach to the management of natural resources and areas such as MPAs, the findings at both sites demonstrate that, up until very recently, the management approaches and decision-making processes were still predominantly state-centric and driven by technocrats that focused on concerns for the environment. Management decisions taken by state governing actors are

often in contrast to local visions and ideas of governance and, in some cases, counter to local and customary practices.

In the two case studies, there was evidence of the existence of policy provisions that are in conflict with local values and ideas of governance, with major implications for contemporary and future access. By analysing the current governance processes and interactions, the section that follows describes how local resource users respond to policies, rules and management objectives that they consider to be imposed, unjust and contrary to local needs, livelihood activities and customary practices. The discussion demonstrates how governance as a dynamic process plays an important role by influencing how local resource users harness different mechanisms to access resources at different times. Focus is placed on two key outcomes affecting governance systems at the case study sites: First, local resource users are challenging the *old paradigms*, by demanding that their customary practices are acknowledged, and are transgressing (i.e. ‘informal’ fishing occurring) statutory rules to gain access to resources. Second, focus is placed on how these claims and actions are influencing change in the governance interactions (especially in Ebenhaeser), with emphasis on important aspects of how governance influences access mechanisms.

8.2.3 Challenging *old paradigms*

In both case studies, resistance to old paradigms has been evident. The motivation for challenging the proposed and current state of affairs is due to various international influences and discourses on rights, and the influence of post-apartheid reform processes, which have also had a strong focus on a human-rights approach. Additionally, processes taking place across South African society, such as land reform, are resulting in increasing calls by local communities for the recognition of customary rights and practices. Importantly, the relevance of these calls is gaining ground. Governance of the Olifants River fishery has been in a state of flux since the early years of democratisation, with various changes in government authorities and decision-making. Compounding this are proposals such as the ‘phasing out’ of gill-net fishing activities (*Chapter Six*); consequently, a discordant environment has ensued in terms of management. The policy directive (2005) to phase out gill-net fishing has been an area of contestation and has been met with vehement resistance by the local fisher community of Ebenhaeser who were never properly consulted on this matter. While the management authority, DAFF, has acknowledged that this decision will not be implemented until such a time that alternative livelihood options have been explored for local fishers (AEC 2008), the community have indicated that this proposal will undermine their current livelihoods, as well as the cultural and historical value that the estuary holds¹⁷⁰. Since the mooted of this policy directive, plans to explore or implement alternative livelihood options for the fishers of Ebenhaeser have seen little discussion, exploration or

¹⁷⁰ Interview with former OVV chairperson, Pieter Cloete, on 22 October 2009 at Olifantsdrift, Ebenhaeser.

development. During focus-group sessions with fishers in the current study, their position on the matter remained the same; i.e. they will not accept the proposal to phase out their on them¹⁷¹.

Equally, the most recent developments at the Olifants River, including the development of a management plan, have been met with resistance (as discussed in *Chapter Six*). This opposition has largely been attributed to the fact that the process was flawed from initiation, and consequently treated by the fisher community of Ebenhaeser with discontent and mistrust. The process of developing the OEMP has seen varying degrees of change throughout the process. As a result of not accepting the initial OEMP, however, there has been strong motivation from the fishers and the OVV to develop management proposals for the fishery, as well as a local vision for management of the estuary. The researcher was able to attend two meetings in 2011 and 2012, respectively, where fishers and the OVV embarked on a process of envisaging how they see the development of the estuary occurring, and the management proposals that should guide the vision. Moreover, with the push for representation in management meetings, the local OVV chairperson was elected as a co-chairperson of the interim forum that was established. This has resulted in the fisher community being alert to any discussions or decision-making that the body proposes. The initial community meetings organised by the fishers and the OVV have seen focus on planning and identifying guiding principles that could help the development of a local vision and management proposals for the estuary¹⁷². From these community meetings, the researcher observed that emphasis has been placed on developing principles which highlight the community's recognition as custodians of the Olifants River estuary, and that their historical and customary practices should be acknowledged. Furthermore, strong emphasis has been placed on ensuring that management objectives are balanced and focussed on pursuing ecological as well as livelihood integrity. Berkes *et al.* (2003) add that ensuring synergy between social and ecological systems is critical to understanding and ultimately achieving sustainability in fishery systems. The community has been explicit in emphasising links between the land (and therefore the restitution process) and the estuarine environment, highlighting that the two cannot be separated and that they regard themselves as the primary rights holders of this area. It is evident that this has forced other actors to look at the issue of access in a different way – this versus the position five years ago, when pressure from consultants, government and other stakeholders saw motivation put forward to declare part of the Olifants River 'protected'.

¹⁷¹ Focus group meeting with ten fishers from Nuwepos, Ebenhaeser on 22 October 2009. Present: Niklaas le Roux, Hendrik Galant, Jan Fortuin, Daniel van der Westhuizen, Frank Julies, Kevin Peters, Charl le Roux, 'Oubaas' Gertse, Dam Cupido and Patric le Roux.

¹⁷² Two meetings have been held (late 2011 and May 2012) and the process to develop local fisheries management proposals will continue in 2013. The major aim is for the fishers and community to develop detailed management proposals that will be presented and discussed with fisheries scientists, management officials and other stakeholders, and which will ultimately be considered for inclusion in a finalised management plan for the Olifants River estuary.



Figure 22. The researcher and members of the Ebenhaeser community during a meeting in 2011 to discuss and identify key principles for inclusion in the OEMP (Picture: LRC 2011).

While no formal litigation measures have resulted from this process, a notable achievement is that the process was challenged and stakeholders have agreed that the concerns and livelihood aspects of the fisher community of Ebenhaeser need to be addressed prior to finalisation of the management plan. The fact that there has been a delay in finalising the OEMP may give heed to the customary claims and value that the community have presented for maintaining access at the estuary. While the scenario in Ebenhaeser may see success for the local fishers in terms of the recognition of their customary claims and the emphasis on a more participatory approach to governance in fisheries, in Covie, calls for access and acknowledgement of such claims have seen less focus. In the latter, as a case where access to traditional fishing sites has been prohibited by statutory controls, local resource users' calls for access, rights and participation in decision-making have been ignored.

As mentioned above, MPAs have been used as a management approach to reduce the impact of fishing activities and to restrict or prohibit certain activities (as is the case at the Olifants River); however, there have been varied reviews about the applicability of declaring MPAs as an effective governance approach to ensuring that sustainability targets in fisheries management are reached (McCay & Jones 2011; Vandepere *et al.* 2011; Mora *et al.* 2006). As Jones (2006) notes, this can be related to fisher or community attitudes towards MPAs (specifically those with 'no-take' zones), and these perceptions are critical in light of problems that may emerge in MPA management. In relation to this, the TNP management approach, which is centred on retaining the *status quo* in terms of conservation and eco-tourism, is at odds with the socio-economic, cultural and livelihood activities of some of the communities bordering the park. As discussed in *Chapter Seven*, the major area of

contestation here is centred on the fact that the Covie commonage, which afforded the Covie and surrounding communities access to coastal areas and historical fishing sites, was incorporated into the park, resulting in access being cut off. This did not resonate well with these communities; their discontent and frustrations are evident in the ‘informal’ fishing practices which occur in the MPA, as well as the 2007 ‘invasion’ described in *Chapter Seven*. Varying levels of discontent and disregard for formal management systems were frequently observed during the research process, and are contained in statements by fishers:

“Mense sal aanhou loop visvangs, solank hy honger is of vir sy gesin moet sorg sal hulle uitgaan en gan visvang by Covie se see. Mense het van doertyd gaan loop visvang, want dit was hulle tradisies, hulle het so gemaak voor die wette en parke aangekom het. Mense sal aanhou want dis nie net ons gemeenskap mense wat hier visvang nie, maar SANParke se mense! Hulle sê dis vir narvorsing, maar weerhou mense hier wat nie kan vir hul gesinne sorg nie.” (People will continue to fish as long as they are hungry or need to provide for their families and will therefore go fish at Covie’s sea. People fished historically as this is their tradition and they did so long before policies and parks came here. People will continue to fish as it is not only people from our communities who fish here, but also people from SANParks! They say it is for research, but they restrict people who cannot provide for their families.)¹⁷³

In terms of governance – and more specifically, in terms of challenging the current *status quo* – this case study indicates that the prevailing governance system, with respect to policies, management approaches, rules and regulations, and decision-making processes, has failed to recognise the historical aspects associated with access to fisheries resources and the contemporary socio-economic needs of the surrounding communities. In the case of Covie, prime coastal land that enabled access to the coast and fisheries resources was excised by the park, without consultation with the community. The current governance system concerning TNP presents a hierarchal mode of governance, while communities surrounding the park seek greater involvement and participation in management and decision-making processes. This top-down approach, as explained by McCay and Jones (2011), is characterised by the employment of government and professional experts (i.e. researchers and scientists) as sources of information for making and enforcing rules. Bottom-up approaches, on the other hand, involve all members of civil society, either as autonomous decision-makers or as partners with government. Evidence for the top-down mode of governance in this case study is characterised by the reliance on scientific expertise in terms of setting sustainability indicators in TNP and the nature of enforcement, which sees fishers being issued with very high penalties for trespassing and fishing within an MPA when caught by compliance officers. Further evidence of this top-down approach is observed in government’s commitments to achieving global conservation objectives

¹⁷³ Interview with two fishers (who fish illegally in the MPA) at Coldstream on 19 October 2010.

(SANParks 2008; Cowley *et al.* 2002), an example of which is evident in the former Minister of DEAT's response to the 2007 'invasion' of the MPA by local fishers and other community members:

"MPAs are a key part of our strategy to manage vulnerable eco-systems in a sustainable way. They are the life-support system critically needed to resuscitate ailing oceans and collapsing fish stocks. They provide a refuge for fish, and indeed all marine species, to increase in quantity, size and reproductive output. MPAs also increase catches outside reserves as juveniles migrate. Because of our determined and forward-looking approach, South Africa today counts amongst the world leaders in implementing the goals set at the 2002 World Summit on Sustainable Development - 18% of South Africa's coastline falls within formal protected areas"¹⁷⁴.

As the TNP is one of South Africa's oldest national parks, its management approach, decision-making institutions and policies advocate support for conservation. Furthermore, its governance system and processes are strongly influenced by regional and global sustainability and conservation norms. With respect to regional sustainability, for example, South Africa has played a significant part in developing the environmental components of NEPAD, which provides a framework for environmental action for African nations. Through the PAA (2003), which has the objective of protecting and managing ecological areas that represent biodiversity, there is not only a national, but also a global commitment to conservation and upholding the protective status of areas with protected status, such as TNP. Thus, global norms of conservation become entrenched in national and local levels of governance (Sowman & Wynberg, forthcoming). While local community needs and participation are acknowledged and advocated for in the TNP management plan of 2008, efforts to meet global conservation objectives and targets have dominated decision-making, and the interests of local communities and other stakeholders have been neglected.

It has been documented in *Chapters Five and Seven* that communities in the Tsitsikamma region have a long tradition of dependency on natural resources, and enjoyed access to forests and coastal resources prior to restriction by statutory controls (Watts & Faasen 2009; Faasen 2006). Issues relating to rights and ownership thus remain contested terrain. Land to which communities have historically enjoyed access, has been claimed as an area of ecological and conservation significance. Giller *et al.* (2008) add that in such cases major tensions are observed between global conservation values, national interests and tourism development, and the socio-cultural and livelihood activities of local people. Such tensions, while manifesting most concretely at local levels, may span multiple scales and involve societal stakeholders with different worldviews and objectives (Gibson *et al.* 2000). The 2007 'invasion' of the MPA demonstrated local communities' frustrations with

¹⁷⁴ Excerpt from the official statement by Minister Martinus van Skalkwyk (DEAT 2007). Available online: <http://www.info.gov.za/speeches/2007/07112714151001.htm> (accessed 24 July 2011).

management and the current status quo, but reactions from other stakeholders (including civil society, the marine science community, government and management) to uphold the *status quo*, clearly demonstrated the tensions and challenging dimensions of the governance of MPAs. These aspects not only have implications for ‘bundles of rights’ (or the communities’ right to benefit) (Ribot & Peluso 2003), but the ‘bundles of powers’, which in this case saw power being removed from local people’s abilities to access or participate in decision-making processes, consequently limiting their ability to play an active role in resource governance.

In an analysis undertaken by the UN Environment Program (UNEP), the effectiveness of governance was suggested to depend largely on institutional diversity (Jones *et al.* 2011) and the combination of top-down, bottom-up and economic incentives in governance. The study identified five categories of incentives that may lead to improving MPA governance: participative, legal, interpretative, knowledge and economic incentives. Participative incentives encourage the participation of a wide network of stakeholders; such collaboration or ‘co-management’ has been cited as a viable approach, especially for ocean governance (Gutiérrez *et al.* 2011; Defeo & Castilla 2005). Legal incentives provide the legal framework for MPAs and outline specific use restrictions and the roles and responsibilities of the different stakeholders (McCay & Jones 2011). These incentives are viewed as working from the top down (i.e. laws, policies, etc.) and bottom up (i.e. local laws which may support local rights of access to the MPA). Interpretative incentives aim to outline the rationale and need to communicate the expected outcomes of MPAs, while knowledge incentives aim to combine scientific information relevant to MPAs with local and traditional knowledge (McCay & Jones 2011). Economic incentives are seen as important in gaining the support of local stakeholders, and may provide direct benefits and opportunities in terms of jobs, tourism opportunities and any other activities allowed in the MPA.

In South Africa, the NEMA creates a framework for facilitating the involvement of society in environmental governance. Similarly the PAA (57 of 2003: *Chapter Four*) and the NFA (1998), which are all important statutory instruments in governing protected areas, promote the effective participation of local communities in managing protected areas. While SANParks encourages co-operation and building of both formal and informal partnerships through its management approach (SANParks 2008), these efforts are not viewed as participatory, legitimate or significant by local community members¹⁷⁵. Furthermore, while the new SSFP could act as a mechanism to advocate the restoration of rights and redistribution of fisheries resources in order to address the socio-economic and cultural rights of marginalised fishing communities, procedures and mechanisms to achieve these objectives have not been clarified. In the case of MPAs, where access to fisheries resources have been

¹⁷⁵ Comment by Enrico Bruiners, chairperson of the Tsitsikamma Angling Forum, during an interview at Stormsriver on 18 October 2010.

restricted, procedures to review the status of such areas in terms of the rights and needs of the community on the one hand, and considerations for resource sustainability on the other, will be required (Sowman *et al.*, 2011). However, in the case of TNP, such considerations will be met with resistance from the marine science and conservation community, as well other government departments responsible for fisheries and environmental management. This became evident in 2007 when proposals to consider reversing the protected status of parts of the MPA were reviewed. As local communities are continuing their calls for customary recognition, coupled with their defiance of formal statutory controls, their discontent towards TNP and its mandate will continue until such time that these aspects are addressed.

The governance systems in both case studies have highlighted a range of complexities within these fisheries systems. At the Olifants River, the state of the governance system is in flux with the occurrence of recent shifts. The process of the fishers embarking on developing their own management proposals, which may be included in the management plan, bears example of this shift. In the Covie case study, a ‘balanced’ mode of governance is less visible and management objectives, which include global conservation targets, are at odds with socio-economic, cultural and livelihood activities. This top-down mode of governance has failed to recognise local claims for access, as well as the current socio-economic conditions; it has resulted in disregard for rules, regulation and management approaches, and has fuelled ‘illegal’ fishing practices. As the Covie land claim has not been finalised and the surrounding communities’ calls for clarity on aspects related to the Covie coastal strip (commonage) have not been addressed, these ‘illegal’ practices and calls for recognition of customary claims and participation in governance are likely to continue. While the role and participation of local resource users is key in (co)-governance processes (Moser & Norton 2001), the focus should not only be on decentralisation and greater participation of local resource users, but also on the accountability of decision-makers to the people who are most affected by their decisions.

8.3 RIGHTS-BASED MECHANISMS OF ACCESS

8.3.1 Formal rights

In the conceptual framework, and in both sites represented in the case studies, the role of formal rights in accessing fisheries resources has been acknowledged as important mechanism. In the previous chapters (specifically *Chapter Four*), it was mentioned that post-apartheid reforms have sought largely to address issues of inequality and enhance access rights to natural resources. The law reform process that saw the drafting of a Constitution, which is described as the supreme law of the country (Glazewski 2000), emphasises a human-rights-based approach underwritten by the Bill of Rights (Witbooi 2006). Furthermore, it has been highlighted that the Constitution underpins acts such as the NEMA (107 of 1998), which governs environmental management in South Africa, as well as various

other laws such as the ICMA: BA (10 of 2004) and the ICMA (24 of 2008), which promote greater and more equitable access to natural resources, including fisheries resources (Witbooi 2006). However, practice has shown that promoting equitable access to natural resources, including fisheries resources, is challenging. Although formal rights, usually in the form of annual permits, have been issued to hundreds of previously disadvantaged members of coastal fishing communities, relatively little progress has been made in South Africa to address the rights issues and needs of traditional small-scale fishers and fishing communities (Sowman *et al.*, 2011; Isaacs 2012; Sowman, 2006). This has been particularly challenging where improving access to coastal areas and fisheries resources has been seen as contrary to long-standing conservation and fisheries management approaches and objectives (as in the case of the TNP MPA). Thus, the issues of (i) access rights, (ii) who has legitimate rights, and (iii) how these are determined, are key challenges facing managers and decision-makers in South Africa.

By highlighting outcomes from the case studies, it has become apparent that – despite the development of progressive policies that speak to equity, upholding or enhancing rights, and greater access to natural resources – the issue of rights (whether actual or perceived) remains an area of contestation. Statutory rights are, however, acknowledged by local resource users in the case study sites. At the Olifants River, exemption permits are renewed on an annual basis and enable access for 90 fishermen to legally harvest harders. Furthermore, the distribution of these exemption permits is left to the discretion of the local OVV, indicating some level of decentralisation of management powers. In the Covie case, fishers are able to purchase a recreational permit to formally access fisheries resources at recreation sites. Additionally, while fishers acknowledge and use formal rights to access resources, reference to customary claims for access has been a prominent feature at both sites. These claims, however, are not only made to substantiate claims for acknowledgement of access rights, but to seek formal recognition of the history, dependency, identity and cultural aspects on which these fisheries are based.

As evident from the results of the case studies, reference is made to the role of customary practices, and local communities refer to these through strong narratives when employing rights mechanisms for access. Here, three distinct themes were evident: (i) While fishing is rooted in the traditions and history of these communities, access to fisheries resources was equated with basic human rights. Therefore, local resource users make on-going reference to customary practices, to legitimise their continued access to fisheries resources. Local resource users are also aware of what they are entitled to by formal statutory rights; this has been especially forthcoming as a result of greater awareness of Constitutional rights, and engagement in processes such as land reform (which is on-going at both sites). In harnessing mechanisms to maintain or justify access gain, resource users therefore draw on both customary and statutory discourses when articulating their access practices and claims. (ii) As

fishing activities have formed a cultural basis and dependency in terms of livelihoods, the second aspect was associated with rights to food and enabling food security. (iii) Last, and fundamental in terms of emphasis placed on customary claims, is as a result of the history and dependency that has evolved from access to fisheries resources. Emphasis on the right to maintain a traditional fishing identity and culture was observed as key to these customary claims.

The latter theme, maintaining a traditional fishing identity and culture (Figure 21), is discussed in section 8.5 below. While it was identified as a ‘rights-based’ mechanism of access, this theme has also been identified as an indirect mechanism of access (as highlighted by Ribot and Peluso 2003), demonstrating the level of overlap in identifying and analysing mechanisms of access. While these features were observed as fundamental to customary claims, it has also become evident that aspects associated with legal pluralism, and the use of both customary and contemporary discourses, are mechanisms for gaining, maintaining and substantiating access.

8.3.2 Claims to customary practices: The role of fisher and human rights, the right to food and food security, and the existence of plurality

8.3.2.1 Fisher rights are equated to human rights

South Africa’s democratisation set in motion a wave of change in the political landscape and society, and created a platform where citizens could demand that their rights be recognised and upheld. These demands have become a feature of the democratic state. While the Constitution acknowledges a range of rights, the implementation of these rights has proved challenging, especially with regard to access to natural resources. The LRP (discussed in *Chapter Four*) has grappled with the complexities of reconciling rights to land as formal property rights are upheld in terms of the Constitution (Section 25), and these have generally always taken precedence over any other rights. In the fisheries sector, the prioritisation of the commercial sector and the oversight of the small-scale fisheries sector (Sunde *et al.* 2011; Isaacs 2006; Sowman 2006; van Sittert 2002) have meant that this sector required an overhaul (as outlined in the MLRA), with core focus on the broadening of access rights to local resource users.

The case studies have shown how notions of rights, based on historical and/or customary claims, are perceived by local resource users as legitimate to enable access to fisheries resources. In particular, these notions have been observed when interviewees spoke of their own and community experiences in relation to accessing fisheries resources. Kurien (2003) notes that a ‘right’ refers to the relationship between persons and their environment in the context of gaining benefits from a resource; it refers to the stream of benefits that one is entitled to in a given context, and assumes recognition of the entitlement to claim these benefits by a community group (Kurien 2003). However, rights and claims

to resources are embedded in complex processes which include social as well as governance processes, and these cannot only be ascribed to people's notions of entitlement (Wilson 1999). Therefore, the range of challenges that the fisheries sector has come up against is not only based on notions of entitlement and what people believe they are entitled to as a consequence of their history (or endowments), but also on the range of expectations created with the advent of democracy, which have manifested within these complex systems of fisheries governance.

In South Africa, and in small-scale fisheries worldwide, the role of co-management has been researched as a mechanism to promote decentralisation of national powers to local resource users and institutions in order to promote user rights (Isaacs 2012; Kolding & van Zwieten 2010; Nielsen *et al.* 2004). In Southern Africa in particular, as Isaacs (2012) highlights, collaborative efforts, in the form of an action research project, were aimed at institutionalising co-management in five SADC countries including South Africa. However, these efforts came up against various challenges. In South Africa, Sowman and Hauck (2003) confirmed that while participatory democracy favoured a co-management approach, the lack of commitment from government institutions was a key challenge to implementing such co-management. Therefore, co-management in South African fisheries has had varied reviews (Clarke 2006; Napier 2005; Sowman *et al.* 2003), with few successful examples. Other than the province of KwaZulu-Natal, where biodiversity and conservation management is vested within a provincial authority¹⁷⁶, small-scale fisheries remain driven by managers and scientists in national government departments, where a resource-oriented, command-and-control approach to fisheries has been adopted (Hauck 2008). At the Olifants River, the role of co-management was explored with the community through participatory workshops and training, but due to challenges, which include little commitment from government departments as well as the policy directive to 'phase out' gill-net activities (a major area of contestation between fishers and management authorities), these efforts have produced little success of promoting the decentralisation of powers and enhancement of user rights and decision-making powers. The 'phase out' policy directive has resulted in mistrust and suspicion from the fishers towards management authorities¹⁷⁷. This breakdown in terms of trust and communication has been identified in the literature as a fundamental obstacle for the implementation of co-management arrangements (Harris *et al.* 2003; Berkes *et al.* 2001; Pomeroy *et al.* 2001; Pinkerton 1994). The new SSFP (2012), which advocates for co-management forms of governance, may provide the legislative means and support for reviving co-management at the Olifants River and in other small-scale fisheries across the country. As a foundation for co-management already exists

¹⁷⁶ Ezemvelo KZN (EKZN) Wildlife is the provincial agency mandated to carry out biodiversity conservation and associated activities in the province of KwaZulu-Natal in the Republic of South Africa. The primary focus of the organisation is biodiversity conservation; this includes the management of 99 protected areas and two World Heritage Sites.

¹⁷⁷ Interview with former OVV chairperson, Pieter Cloete, 22 October 2009 at Olifantsdrift, Ebenhaeser.

among the fishers of Ebenhaeser, this site could pilot the implementation of the objectives of the new SSFP.

While co-management has been identified as one governance approach that could enhance user rights in fisheries, Isaacs (2012) notes that a human-rights-based approach to governing fisheries is increasingly being proposed. Adopting such an approach would enable fishers and their communities to be less vulnerable. Allison *et al.* (2011:96) urges: “states and those involved in governance and development to more explicitly adopt a human rights perspective when allocating fishing rights and poverty alleviation programs”. In South Africa, the commencement of fisheries transformation resulted in various degrees of discontent, largely displayed through protests led by fishers and fisher communities, with demands for rights to practise their livelihood activities and calls to government to uphold their human rights. While various international human rights approaches assert the protection of the most vulnerable groups in society, there have been critics noting that these rights as mere window dressings or a wish list in practice (Matua 2002). The Universal Declaration of Human Rights (UN 1948) sets out a range of norms, processes and institutions which should promote human rights, but even this reliance on a universal concept of rights has not succeeded in creating common ground, or agreement as to the scope, content, and philosophical bases for human rights (Matua 2002). However, Allison (2011) notes that a key advantage of adopting a human rights framework for fisheries is that it emphasises the human rights and responsibilities of small-scale fishers and management, and not only the goals and policy objectives to aspire towards. Furthermore, Allison (2011:10) adds that “fishing rights and human rights are interlinked”. Here he argues that in this sense there is a case to be made for adding real value to the term rights-based fishing and to implement and work towards a balance where environmental sustainability is balanced with economic and livelihood needs.

However, in realising human rights in fisheries, there are challenges. One key challenge indicated by Jentoft *et al.* (2011) is that in fisheries, balancing human and property rights, there has always been the assumption that the two are mutually exclusive. The challenge Jentoft *et al.* (2011) points to is that human rights are seen as the basic right people have not to be excluded, but that property rights are used at times to do just that, as it involves elements of exclusion and sets clear boundaries between the ‘haves’ and ‘have-nots’.” Property rights as a regulatory tool can therefore give way to situations such as ‘informal’ fishing; as highlighted in this study, where exclusion and clear boundaries between the ‘have’ and ‘have-nots’ are evident. When transformation in the fisheries sector occurred, many resource users remained excluded from the rights allocation process and continued their fishing practices of before the policy reforms, but their activities were deemed as ‘illegal’ (Isaacs 2011; Hauck 2008; Hauck & Sowman 2003). In outcomes from the case studies, aspects related to such illegal activities have been observed, but these were defended in terms of perceived customary claims

to access resources and other motivations based on socio-economic needs. These contentions and conflicts pose challenges within fishery systems and the governance thereof. Isaacs (2012) notes that the development of the SSFP has been an example of how challenges and conflict between human and fishing rights have been addressed in South Africa. During this process, fishers and communities were able to assert their rights, but this process also created awareness about basic human rights, which include rights to food and food security, and emphasised rights to culture (Isaacs 2011; Petersen 2008). These aspects were apparent during various interviews at the case study sites and are discussed below in terms of their relevance for access. Aspects associated with rights to food security and the right to culture are especially central to the access mechanisms employed at both case study sites when fishers substantiate access practices.

8.3.2.2 Fish as food and food security

Fish has long been recognised as a healthy food; many rural communities in developing countries rely heavily on fish as part of their diet (Cheuenpagdee *et al.* 2005). The Universal Declaration of Human Rights (Article 25) highlights the basic right to adequate food, defined in relation to food security: “a condition when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life” (UN 2001). As a basic human right, this has also been adopted as one of the UN MDGs. In South Africa, access to food and food security is acknowledged in the Constitution (Section 27(1)(b)). Furthermore, South Africa acknowledges these rights in regional agreements and programmes such as the SADC Food Security Strategy and NEPAD’s Comprehensive Africa Agriculture Development Program (Sowman & Cardoso 2010).

Fishing can contribute directly to food security or indirectly as a means of revenue generated from production and/or related processing and marketing activities (FAO 2005). At both case study sites the role of fish for food was observed as fundamental to livelihoods, especially at household level, and was an aspect with which local resource users associated in terms of rights. In the Ebenhaeser case study, while fishing contributed to food security, the level of commercialisation played a role in how much is consumed at home. As described in *Chapter Six*, a good catch is sold to local markets and ensures access to disposable income from the sale. In the event that a catch is not significant for sale, it will most likely be consumed within the household or shared with extended family or community members. Additionally, during periods when little or no fishing occurs, the consumption of dried fish is an alternative to sustain households during inactivity of fishing activities, especially during winter. Béné *et al.* (2003) note that while it is usually assumed that fisher households consume most of their catch, research in Lake Chad, for instance, has shown that some households would choose to sell most of their fish to purchase cheaper foodstuffs, thereby not maximising the nutritional value that fish offers. With limited sources to secure disposable income to purchase other goods or

pay for needed services, such as public transport, the sale of the majority of a fish catch is an activity in which many fisher households in Ebenhaeser engage. In the Covie case study, fishing was identified as a source of food when little or no alternatives were available. Some respondents remarked that they fished as their families needed to eat, and some women showed interest in fishing on provision that there was access to fishing sites. As both communities used in this analysis are characterised as rural, with very limited development and opportunities for alternative sources of employment (and hence income), the role that fishing plays in ensuring food security remains an important aspect for fisher livelihoods. Consequently, people will engage in these activities, even if deemed illegal.

8.4 RECOGNITION OF A PLURAL LEGAL STATE

In the context of post-apartheid South Africa, some of the country's most persistent and intractable tensions have revolved around access to, and claims for, natural resources (Tropp 2006). Years of unequal access to opportunities and resources, as well as economic impoverishment, have led to urgent demands, especially from the country's rural poor, for more equitable, democratic and sustained access to and control over vital livelihood resources (ibid). Access to natural resources is often regarded as contested, and colonial and apartheid processes have had a major influence on creating these contestations evident in contemporary society. Sikor and Lund (2009) add that these contestations are generally observed in post-colonial and post-socialist societies where aspects associated with legal pluralism are apparent. This is due to colonial and, in the case of South Africa, apartheid law imposed on indigenous and customary systems, giving rise to a society characterised by multiple traditions and legal systems (Bavinck 2003). In the fisheries sector, while focus historically has largely been concentrated in favour of the commercial fishing industry, in many parts of South Africa traditional systems remained undeveloped, with communities harvesting resources such as mussels and prawns as well as fishing with gill-nets in many coastal regions (Van Sittert 2002; MDT 2003). Kyle (2003) adds that some areas of the country, such as the Kosi Bay lakes, have been the site of subsistence fishing for centuries, and probably contain the largest true subsistence marine-based fishery.

Therefore, South Africa can be regarded as a legally pluralistic country consisting of different cultural groupings with different systems of tradition and cultural practices, among others, which are protected by a recognised Constitution. Chapter 12 (Section 211(3)) of the Constitution gives recognition to the application of customary law, indicating that "the courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically seals with customary law". Historically, the alienation of people from natural resources, decision-making processes and resource management resulted in many resource users developing their own practices relevant to natural resource use and management in South Africa, and these formed the basis of customary systems

(Tropp 2006). In most instances, these have not been written down or preserved in relation to Western notions, but have remained as customary practices carried forward from one generation to the next through oral tradition (MDT 2003). The outcomes presented from the case studies demonstrate that local rules and norms derived from customary practices were present in the two fisher communities. These were, however, not known as ‘law’ *per se*, but used by fishers to organise their fishing activities and could be viewed as ‘how fishers make sense of the world in which they operate’. Many of these rules and norms were derived from historical practices of fishing, and some are still observed by fishers in contemporary fishing practices. It should be noted that the outcomes from the case studies, therefore, do not suggest or make a case for determining a customary system or associated rights. Rather, the emphasis has been on how claims to customary practices and reference to these are embedded in cultural norms and processes, with remnants still observed by local resource users and used as mechanisms for access.

As described in *Chapters Four and Five*, with the expansion of the commercial fishing industries, a number of regulations and prohibitions placed increasing restrictions on subsistence fishers in many coastal areas of South Africa (Van Sittert 2002). This resulted in the erosion of customary practices of local fishers. To this, Wicomb and Smith (2011) add that “the imposition of inappropriate statutes upon customary communities forced most of these communities to ignore these statutes as far as possible and continue regulating their lives in terms of their custom. Customary law systems thus developed in spheres invisible to the dominant legal system, but these informal systems remained central to the lives of most of their subjects”. Therefore, the commercial fishing sector was a contributor in pushing the local practices of many fishing communities to the margins and rendering them near-invisible to the formal legal system (Sunde *et al.* 2011).

In this study, the research has been explicit about analysing access from a position that calls for an approach to recognise a wider investigation into access that is not only limited to analysing formal legal systems. Rather, the focus has been on bringing the perspectives of people and their experiences to the fore (characteristic of the interpretivist approach, to which this study has been aligned), which highlights that individuals draw on a number of strategies to access or make claims to fisheries resources. By analysing access from this vantage point, it is clear that multiple legal and normative frameworks co-exist, as in most social settings (Meinzen-Dick & Pradhan 2001). In some contexts, especially rural communities, customary systems may be very strong or relevant and formal state laws may receive less attention, but in other settings which may include high-density and city spaces, customary systems may be weak (Meinzen-Dick & Nkonya 2005). As discussed in *Chapter Two*, property rights or formal rights are only legitimate if there is some kind of supporting institution. Meinzen-Dick and Nkonya (2005) add that, in many examples, customary law (which is not static, but changes over time) might be supported by local authority and social norms, and this may define a

community's own rules for a particular resource, and consequently have legitimacy for those observing it. In some areas or communities, people may also have developed precepts about the resources that they utilise, which provides a basis for observing obligations towards the resource (Meinzen-Dick & Nkonya 2005). In this study, these notions of obligation were evident when resource users spoke of how 'one only takes from the sea what is needed' and that 'catching undersized fish cannot be allowed'. These obligations bear relevance of how local resource users perceive their contribution to sustaining resources, but also their access practices. Below examples are provided and highlights how statutory law and customary practices overlap at Ebenhaeser and Covie in relation to fisheries resources. This example has been adapted from from Meinzen-Dick & Nkonya's (2005) work on water rights to this current context:

- As a result of strong historical local norms, fishers and community members have indicated that no one should be denied the right to fish or benefit from fisheries resources: *customary practices*;
- Fishers are able to fish for household use and to generate an income, but are expected to adhere to formal as well as local conduct in terms of fishing: *state law and customary practices*;
- The OVV (committee), who invest voluntary time and efforts, also have decision-making or control rights in deciding to whom exemption permits are allocated and therefore can control how (formal state) permits are managed: *state law and customary practices*;
- Fishing nets are not to be secured from one river bank to the next: *customary practices*;
- Harvesting of undersized and non-targeted species (bycatch) is not allowed: *state law and customary practices*.

This presents a mix of customary practices and formal state laws that resource users may observe and emphasise in terms of rights to resources. In many contexts, local resource users are increasingly drawing on a range of mechanisms to substantiate their claims to resources. Aspects associated with pluralism should therefore not be viewed as emerging from interactions between law and society (Wilson 1999), but rather from multiple forms of social action in which people engage in order to maximise their benefits to resources, and actions that seek to alter the direction of social change.

In both case studies, reference to, and narratives based on, historical resource use and customary practices have been used to justify and legitimise access. Furthermore, even when these claims have not been recognised formally, they are nonetheless legitimate and should be considered by decision-

making authorities. As highlighted throughout this study, as a result of small-scale and traditional fisheries being marginalised historically, lack of attention and authority has meant that forms of customary practices have been observed and have, to some degree, governed these fisheries. It can therefore be concluded that these practices remained at the periphery within small-scale fisheries under apartheid (as highlighted in *Chapter Four*), but after democratisation, emphasis on these practices has seen a ‘comeback’. In the Ebenhaeser case, when objections to the OEMP were made, the community, with assistance from the LRC, highlighted their claims by adding:

“It is believed that the Ebenhaeser community have customary rights to the land and fishing resources of the Olifants estuary and they will soon become the owners of this land; The community wants to protect the estuary from pollution and other harmful impacts and ensure the benefits of this estuary for their own and future generations. They therefore support the introduction of certain protections but any management plan must recognise their Constitutional rights as a first step”¹⁷⁸.

In South Africa, customary forms of tenure are recognised in the Constitution¹⁷⁹, but where recognition of such rights has been sought, it has proved challenging (Wicomb & Smith 2011). There have, however, been examples where customary law has been recognised as a source of law, especially in the land sector¹⁸⁰. Sunde *et al.* (2011) add that an interpretation of the principle of ‘recognition of rights’ would require the recognition of pre-existing rights in terms of customary law. Coupled to this, recognition would be that many communities had access to fisheries resources through collective forms of tenure and that the origin of these rights, and their right to their culture, is inextricably linked to their systems of customary law (Sunde *et al.* 2011). Furthermore, Davis and Jentoft (2003) add that, internationally, the struggles of indigenous people and customary communities have helped to deepen the interpretations of normative human rights principles, to elaborate on what recognition of collective rights and securing control over resources might mean for

¹⁷⁸ OEMP: Unpublished information pamphlet produced for the Ebenhaeser community by MDT, the EEU and the LRC, December 2008.

¹⁷⁹ See Section 39(3) of the Constitution, declaring that “The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation to the extent that they are consistent with the Bill of Rights” (Republic of South Africa 1996).

¹⁸⁰ These examples include the *Alexkor Ltd v. The Richtersveld Community* (2004) (highlighted in *Chapter Four*), *Gumede v. The President of the Republic of South Africa and Others* (2009) and *Tongoane & Others v. The Minister for Agriculture and Land Affairs and Others* (2010). However, a recent example of where acknowledgement of constitutional customary rights was identified is in the court case involving fishers of the community of the Dwesa-Cwebe MPA in South Africa (see Sunde *et al.* 2011).

these communities. In some cases these struggles have resulted in significant judgements on customary rights¹⁸¹.

8.5 IDENTITY AND CULTURE

Throughout this study, reference to how local resource users describe themselves and their activities has seen emphasis placed on the role of identity and culture as a key mechanism harnessed to support access and claims to resources. Local resource users therefore invest in these social relations (i.e. kinship) by aligning themselves to a group or identifying with characteristics of the group. The role of social relations is therefore embedded within identity and cultural mechanisms and is noted by Ribot and Peluso (2003) as central to all other mechanisms of access. How the identity and culture as a mechanism overlap and is embedded in the key mechanisms identified in this study, is highlighted below.

In the section above, aspects were discussed in relation to culture. Here, the focus is on how identity is tied up with cultural practices of fishing. Both case studies are located in rural areas that have seen little development and very limited influx of outsiders over the years. From conducting fieldwork in both case study sites, it was evident that the communities maintain their traditions and cultural practices. Fishing practices, which have been a core element of identity and culture spanning several generations, have been the most apparent feature at the case study sites, but practices such as planting sweet potato (Covie) or baking bread to be served with fish as a meal (Ebenhaeser), are key characteristics that still define the cultural practices of these communities. Members in both communities are close-knit, with many sharing family ties. Contemporary social connections include attendance of Sunday church services, which still has value in both communities; the manner in which they maintained a church building and had a visiting priest on Sundays (Covie), bears witness to the value attached to these practices.

Fishing has been central to the formation of identities at the case study sites. In this research, various references were made to how fishers are 'born a fisherman' or 'simply know how to fish' as a result of growing up in a fisher community. Therefore, great value is attached to this profession. Acheson (1981) adds that fishermen are generally committed to, and value, their occupation. This value is usually displayed as a result of being able to be free to be their own boss and meet the challenges that fishing activities present (Pollnac & Poggie 2006).

¹⁸¹ For example, in February 2010 a ruling of the African Human Commission in favour of the Endorois people of Kenya set an important precedent when it noted that consultation with the Endorois people regarding the establishment of a nature reserve on their land, which led to their dispossession, was not adequate and that they did not fully understand the process (Centre for Minority Rights Development (Kenya) and Minority Rights Group International on Endorois Welfare Council v. Kenya, 2003) (adapted from Wicomb & Smith 2011).

In *Chapter One* it was highlighted that the term ‘fishing community’ would be used interchangeably with ‘small-scale fishery’ when discussing the two case studies. While it is acknowledged that the community at each case study site is not homogenous or united as one identity, the term fishing community is still used both nationally and internationally and therefore has a cultural dimension. The use of the term ‘fisher community’ has been drawn on by community members when describing their communities, and put forward as motivation for gaining and maintaining access. Ribot and Peluso (2003) add that the discourse on ‘tribes’ and ‘natives’, for instance, has become a tactic for both inclusionary and exclusionary strategies to facilitate access: “some groups strategically constitute themselves as indigenous people, their practices as customary law or their land as tribal land and by doing so, gain access to international and national NGOs with interests in those resources” (Ribot & Peluso 2003:171). By strategically emphasising the role of identity and culture as a mechanism to gain and maintain access, these calls are underwritten by various national and international provisions that recognise the rights of local and indigenous people:

- Article 24:2 (b) of The United Nations Fish Stocks Agreement (2001) states that member states should take into account “the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fishworkers, as well as indigenous people in developing states, particularly small island developing states”;
- Chapter 17 of Agenda 21 (Section 17.74) notes that “states commit themselves to the conservation and sustainable use of marine living resources under national jurisdiction. To this end it is necessary to:
 - (i) develop and increase the potential of marine living resources to meet human nutritional needs, as well as the social, economic and development goals;
 - (ii) take into account traditional knowledge and interests of local communities, small scale artisanal fisheries and indigenous people in development and management programmes.”

However, Jentoft (2003) cautions that while the legal provisions and instruments highlighted above can shield indigenous or local resource users, these can be scarcely sufficient as governments, for instance, ignore these if it is in their interests to do so.

From the access mechanisms presented in this research, the use of identity and culture can be regarded as significant. Noteworthy, however, is that this mechanism does overlap with others. When communities assert or make reference to ‘rights-based’ mechanisms of access, the use of identity and culture is present. Additionally, when reference is made to traditional knowledge, it is associated with culture (and ways of ‘doing’ things) as this is a primary factor responsible for constituting knowledge. Harnessing identity and culture as a mechanism of access is a key aspect in the South African context.

As a result of dispossession and years of discrimination and marginalisation, fishing activities (and therefore aspects of local fisher livelihoods) have been vastly affected, but these discriminatory processes have not resulted in the elimination of fishing practices or the fishing culture of these communities; therefore, the desire to continue these practices is still relevant. This desire could be equated to people's abilities and strategies put forward for survival, both from a livelihood as well as a cultural perspective. Watters (2001; 2002) notes that "culture and the environment are intertwined for many indigenous people, they are indivisible. Any harm to one is almost certain damage to the other and injury to both is a substantial threat to identity and therefore even survival". From the research results it can be concluded that local struggles for access are conditioned by and fed into national-level politics and management of natural resources, as well as the remnants of the range of historical inequalities that need to be addressed. The recognition for the need and development of the SSFP bears witness to this. Furthermore, the emergence of customary claims to access fisheries resources challenges the state as the primary politico-legal institution, even in the absence of formal recognition of these claims in some contexts. This groundswell of historically entrenched forms of access – which consists of reference to, and emphasis placed on, historical fishing practices – is surfacing as fishers and their communities perceive that their rights under formal statutory control and institutional arrangements are not being realised. There is, therefore, a strong sense and reflection by fisher communities of injustices suffered and loss experienced under the former dispensation; and in the current context, sentiments of fear of being marginalised have been reiterated. These have been evident from community members who highlighted that they were the '*agtergeblywendes*' ('those left behind'; interview with Mr Walkie Taylor), who were 'left behind by the previous government' with the events of the past now 'repeating themselves'¹⁸². Community members experienced losses (materially and emotionally) based on past events, and are desperate to guard against the reoccurrence of such events.

8.6 KNOWLEDGE AS A MECHANISM OF ACCESS

In this study and in the literature, it has been acknowledged that, historically, people and social systems were marginalised and placed at the periphery of fisheries management, with conventional approaches ignoring the "socio-economic needs of fisherfolks, livelihood issues, integrated management of coastal resources and the potential of interdisciplinary and participatory approaches to meet these needs" (Berkes 2003:8). However, increasingly, alternative approaches are being popularised and recognised in fisheries management, especially in small-scale fisheries, to achieve sustainability (Symes 2006; Pollnac & Pomeroy 2005; Berkes *et al.* 2001) and simultaneously secure resources for livelihoods. An important element of this new approach is the integration of TEK into management decisions (Garcia & Charles 2008; Pinkerton & Weinstein 1995; Berkes 1993). The

¹⁸² Interview with Rosie Afrika highlighted in *Chapter Six*.

CBD has been a crucial step in recognising the need to “respect, preserve and maintain” ecological knowledge and to ensure that the benefits of commercial application are shared adequately (Daes 2003; Jentoft 2003). The integration of TEK, therefore, can add to small-scale fisheries management by providing alternatives to conservation and economic strategies; this empowers local resource users and informs or complements ecological research and management (Pomeroy & Rivera-Guieb 2006).

The case studies have presented knowledge as a mechanism that is important for access. This mechanism, as with identity and culture, has been used by fishers to highlight how they make sense of their harvesting activities, for instance, and how they believe their activities and knowledge of fisheries resources are important for decision-making. In Ribot and Peluso’s (2003) description of the role of knowledge mechanisms, they add that beliefs, ideological controls and discursive practices, as well as negotiated systems of meaning, shape all forms of access. Therefore, access may, in some instances, be driven by more than economics. This was highlighted in outcomes presented here and may, *inter alia*, serve social, political or ritualistic purposes. Key aspects related to knowledge mechanisms have been: local resource users’ knowledge of their environment and fisheries resources; their fishing activities; as well as the histories coupled to these. These aspects are all relevant for access and for resource users to gain, maintain or claim access based on how knowledge mechanisms are used to substantiate their practices.

This study has documented various aspects of TEK and has highlighted that traditional forms of knowledge co-existed (and continue to co-exist) with fishing practices and established social norms. Evidence of this co-existence was noted during oral history interviews, for example, where reference were made to how knowledge about certain fishing practices and protocols ensured the continuity of fishing practices, maintained order and resulted in local sustainability practices. By reflecting back on outcomes presented in the results chapters, knowledge aspects related to natural indicators, such as weather for instance, were fundamental for fishers to ascertain whether fishing conditions were favourable for ensuring a good catch; knowing the direction of the wind to ensure safety (i.e. that fishers in ‘bakkies’ were not blown to the side of the river bank); and for knowing when the river would ‘come down’ with fresh water and the fish would ‘rest’. Furthermore, knowledge related to sustainable fishing practices was observed; fishers stated that undersized fish were not to be caught, and demonstrated systems of seasonal preferences for species harvested at particular fishing sites (representing knowledge in terms of their regard for sustaining the resources). This knowledge, which has been transmitted orally from one generation to the next, represents the manner in which these systems have remained relevant and engrained in the two fisher communities studied here. Importantly, it has served to enhance a better local understanding of the characteristics of these fishery systems. Menzies and Butlet (2006) add that holders of TEK recognise that such knowledge comprises historical and contemporary aspects, and the combination thereof allows an understanding

of both historical and current environmental conditions. It has been acknowledged that the livelihoods of fishers and the resources that they harvest have not always been understood (Hauck 2008). The reliance on fisheries science to manage resources has meant that fisheries management has neglected the experiences of small-scale and traditional fishers (Pauly 2006). These experiences and knowledge of local resource users, Berkes (2009) explains, are in terms of information and process. In the case studies, the fishers' knowledge was based on past and present experiences, and was influenced by changing contemporary circumstances. The 2008 events of '*rooigety*' (red tide) at the Olifants River influenced fishing activities; fishers avoided fishing during this time, as they believed the fish were not suitable for consumption. This emphasises how local knowledge influences fishing practices and how localised systems of TEK provide a deeper and more nuanced understanding of the fishery as a whole (Hushlak 2012).

South Africa is signatory to a range of international instruments (e.g. Article 6(4) of the FAO Code of Responsible Fisheries merges TEK and science in small-scale fisheries management), which promote the recognition and inclusion of TEK in management. The country is therefore party to a commitment towards knowledge integration in natural resource management. The newly promulgated SSFP (DAFF 2012) recognises customary rights and "recognises the complementary value of indigenous and local knowledge" (DAFF 2012:15). While these commitments are novel, there is no plan or instruction, and few examples exist, for the successful implementation of TEK in small-scale fisheries. Drew (2005) argues that the practical application of knowledge integration is essential to small-scale fisheries management. In a case study by Anuchiracheeva *et al.* (2008), TEK was found to be essential in securing the long-term legitimacy of fisheries management. Knowledge integration would therefore aim to use and incorporate multiple aspects of knowledge into planning and decision-making (Lauer & Aswani 2010; Hall & Close 2007; Neiss *et al.* 1999), emphasising its importance in understanding the dynamic nature of small-scale fisheries. Evelyn *et al.* (2008:52) add that knowledge integration requires "participants to be aware of their own and others' philosophical and epistemological positions".

A key challenge that may hamper the successful integration of different knowledge sets into fisheries management may arise from differences in epistemological approaches in governance. In South Africa, and more broadly in fisheries governance, decision-making in terms of natural resource management has been highly technocratic, and has consequently been recast in the discourse of scientific information (Sowman *et al.* 2011). This gives way to the creation of hierarchies where one form of knowledge may assume greater importance than the other. Roux *et al.* (2006) note that there is a difference to be made between knowledge and information, and this may provide insight into why greater importance is awarded to the latter compared with the former. Information refers to data that is organised, endowed with relevance and purpose, or interpreted (Drucker 2001). This points to the fact

that information involves human participation in the purposeful organisation of known or raw data and that the end product (information) is explicit in nature and can easily be transferred to another user (Roux *et al.* 2006). This is demonstrated by means of research; i.e. scientists engage in research activities and produce outputs in the form of technical or peer-reviewed reports. Knowledge, on the other hand, is defined as a mix of experiences, values, contextual information and intuition, which provide a framework in which to evaluate and incorporate new experiences, thereby bestowing capacity (or abilities) upon people for effective action (Dawson 2000; Davenport & Prusak 1997). A key feature of knowledge lies in the fact that it is usually expressed in tacit form (Polany 1983). Tacit knowledge is highly personal and, at times, difficult to formalise; it is deeply rooted in the individual's actions, experiences, ideals, values and emotions (Roux *et al.* 2006). Tacit knowledge is shared with others through socialisation, and transfer requires intimate interaction between holders of knowledge and recipients.

From the case studies, the documented knowledge of local resource users can be characterised as tacit knowledge, as it has evolved from experiences and values, and the holders use these capacities in access processes. The interviewed fishers were not always sure how to verbalise their experiences or knowledge of fishing activities, often noting that circumstances were 'just how things are'. Furthermore, this knowledge is transferred orally and through socialisation, or through association with, or membership of, a fishing community. This may make transfer or recognition of this knowledge difficult beyond the boundaries of a social group, which may present challenges for integration in fisheries management. In the case of the Olifants River, this has been evident. In meetings where aspects associated with the OEMP have been discussed and inputs or knowledge about fish species have been shared by local fishers, these have been treated with minimal affirmation by management and scientists and not considered in management processes. During discussions about fish species, for instance, fishers would attribute the decline of species to pollution from agricultural activities or historical diamond mining in the area, while scientists noted that these species were overfished and therefore exhausted. These opposing views have implications for the successful utilisation of TEK in management and governance of the fishery system.

In South Africa, historical discriminative processes marginalised the majority of people from natural resources. Batterbury *et al.* (1997) adds that this resulted in scientific information being accelerated according to the perceived needs and agendas of the past regimes or management systems. In the establishment of TNP, for instance, perceived needs and agendas (highlighted in *Chapter Four*), coupled with scientific information, bear relevance. The establishment of the park resulted in the marginalisation not only of resource users, but of knowledge, as emphasis was based on scientific information and universalising categories derived from international conventions and national interests. Gillet *et al.* (2008) add that this type of marginalisation and exclusion are not only a result of

conflict over access to natural resources, but also a major source thereof, which threatens sustainable resource use and management.

Where exclusion has occurred, the contribution and incorporation of TEK in protected area conservation (Ferse *et al.* 2010; McClanahan *et al.* 2006) may reinforce community buy-in and reduce antagonistic attitudes towards conservation. In Covie, such attitudes towards the conservation objectives of TNP were evident, as a result of the exclusion of local resource users and their knowledge. However, as TNP is a protected area, scientific narratives and information have been used to exclude extractive resource activities and justify state control over resources. Advocating for the integration of TEK in management or decision-making in the TNP context, requires the devolution of resource access control maintained by management and the state (which until now have shown little indication for change). In the case of the Olifants River, however, the relevance and importance of the role that TEK can play in the development of the OEMP may potentially foster better co-operation in management and decision-making and enhance knowledge integration and exchange. Fishers believe that their knowledge has a role to play in the management of the estuary; this has been reiterated by local resource users in relation to the OEMP. Embarking on a process of developing local management proposals will include aspects of local knowledge and estuary management, and in this manner, TEK and science could reinforce each other. Nevertheless, Roux *et al.* (2006) note that people need to spend time together, develop mutual trust, learn more about each other's contexts and jointly facilitate tacit and explicit forms of knowledge. Therefore, stimulating the transfer of context-laden tacit knowledge, in the context of developing the OEMP, requires higher participation intensity, quality interaction, and much more time.

8.7 THE ROLE OF NETWORKS

The establishment of networks and partnerships for maintaining or gaining access to natural resources has been identified as a key mechanism of access, and was relevant in the two small-scale fisheries investigated. Ribot and Peluso (2003) note that shifts in the broader political economy, for instance, can make certain kinds of access obsolete, with resource users having to create new types of social relationships and networks in order to gain, maintain or control access to resources. In the case of the fisheries sector in South Africa, democratisation created shifts and gave way to a range of reforms that affected resource users, their livelihoods, fisheries resources, the governance thereof, as well as access practices. In the Olifants River case study, in particular, weight was given to the relationship between researchers and engagement in networks by the local community. The following section highlights how these mechanisms influenced access practices at the site.

The community-research partnership established between the fishing community at the Olifants River and the EEU of the University of Cape Town has been active since 1993. Over the lifespan of this

partnership, various aspects related to the fishery have been documented and analysed. Training and capacity-building initiatives have resulted in the fishers and community engaging with, *inter alia*, concepts and processes of co-management and fisheries management. The EEU established a community-based fisheries monitoring programme which employs young community women to collect fisheries landing data. This has resulted in the participation of community members in fisheries monitoring, their engagement in management meetings, and their input in terms of what the community-based monitoring is bringing to the fore¹⁸³. While the partnership has had various capacity development outcomes for the fishers and community, it has simultaneously resulted in mutual learning. The researcher, for example, has been involved and working with this community since 2005, and has gained valuable exposure and experience in the complexities of small-scale fisheries. Furthermore, by embarking on this doctoral study, different approaches to understanding access have been identified through the research process. Furthermore, it has allowed an understanding of small-scale fisheries as complex adaptive systems (Armitage *et al.* 2008; Berkes *et al.* 2001).

The partnership initially grew out of a community-research partnership between the Ebenhaeser fisher community and the EEU. While such partnerships do occur in most institutions around the world, many have now recognised the value thereof in terms of the contribution to scholarship, enriching research, and linking theoretical ideas to societal problems (Buys & Burnsnall 2007; Vickers *et al.* 2004). Sowman (2009) adds that there has been renewed interest in developing and nurturing community-university partnerships worldwide; not only as these could be mutually beneficial, but also because there exists a moral imperative that universities should engage in this kind of work. At the Olifants River, the partnership initially had a fisheries science focus; later, including socio-economic dimensions and, more recently, a focus on historical, cultural and governance aspects of the fishery, which has resulted in collaboration with other partners such as MDT and the LRC (Sowman 2009).

The involvement of MDT, Coastal Links and the LRC has been invaluable and has resulted in the extension of the community-research partnership into a research network. With MDT's focus on particular human and socio-economic rights, as part of its educational, advocacy, lobbying and capacity-building work, the NGO has aimed to develop understanding among fishers and fisher representatives to use discourses on rights – such as the rights to livelihoods and food security – in an instrumental way (Petersen 2008; MDT 2003). This has meant that an awareness of rights, including Constitutional rights, has enabled fishers and representatives to engage in discussions about their livelihoods and how these provisions acknowledge their right to access fisheries resources. This, however, does not imply that discourses on livelihood rights have been absent from local discourses; this study's results have shed light on this, with reference made by fishers to '*Iewensbestaan*' (a living

¹⁸³ For example, see Carvalho *et al.* (2009) for a review and outcomes based on community monitoring at the Olifants River.

existence) and ‘*visregte*’ (fishing rights). It is, however, key that fishers are able to connect these livelihood aspects to food security rights, as being aware and informed about various provisions (highlighted in section 8.4.2.2) associated with food security would strengthen their position to claim or maintain access.

The fisheries reform process that occurred in South Africa also had far-reaching effects, which set in motion a range of activities that would further strengthen the role of networks within the fisheries sector. The promulgation of the MLRA (1998) did not adequately accommodate the needs of the small-scale fisheries sector; hence the need for a new small-scale fisheries policy was identified (Isaacs 2006; Jaffer & Sunde 2006). However, before this identification, a range of protests, mass action and legal action (K George and others v. the Minister, highlighted in *Chapter Four*) resulted in the Equality Court ruling for interim measures to be put in place until such time that the new SSFP was finalised. The process of developing this policy led to the appointment of a task team, which comprised fishers from all four coastal provinces, researchers, NGOs and CBOs. While this process was underway, fishers were meeting across the country to discuss and develop proposals for inclusion in the policy (Sunde *et al.* 2011). The result, in June 2012, was a finalised SSFP; however, the range of indirect outcomes that this process sparked included new relationships and partnerships fostered between community fisher groups, researchers, NGOs and others. The OVV and fishers have established links and relationships with other local fisher associations across the Western Cape province, and have shared lessons learnt and knowledge gained with other fisher groups across the country. Outcomes and lessons drawn from the network between the EEU, MDT, the LRC and Ebenhaeser fisher community have also been produced and disseminated locally and internationally. In 2010 some of these results were presented at an international conference on indigenous peoples’ rights in natural-resource management in Canada, attended by members of the research team. Here, in collaboration with a member from the LRC, a community liaison officer involved in the project presented a research paper on protecting customary rights and local knowledge in coastal planning processes. Hence, this collaboration resulted in the exposure of local resource users to international discourses, emphasising the recognition of indigenous peoples’ rights, as well as their cultural claims to natural resources.

The initial partnership that the EEU established with the community has resulted in information-sharing and capacity-building initiatives, not only for the fishers, but for local community members including the community monitors. Furthermore, as a result of engagement with MDT, fishers and their communities have been made aware of their rights and have been actively engaged in the development of the SSFP, among other policies. The role of the LRC has supported activities such as lobbying and advocacy for the recognition of rights to fisheries resources, and has served to assist the community in articulating these rights (e.g. in the form of letters addressed to management

authorities). The combination of, and relationships fostered between, civil society, NGOs and legal entities is particularly significant in the contemporary South African context. The involvement of legal assistance has been especially relevant in cases filed against specific policy provisions and shortcomings (the small-scale fisheries process being one such example), and various examples of land cases have significantly contributed to this trend. Robins (1996) provides an example of a successful land claim, the Leliefontein case, where small-scale livestock rearers were able to mobilise social networks to protect their traditional rights of access to communal grazing land. The strategies included establishing contacts with mediators and NGOs in Cape Town, activists, journalists and lawyers (Robins 1996). The outcome of the case led to the claimants' successfully challenging the attempts made by the state and local, educated elites to privatise their communal rangelands (Petersen 2008). The Ebenhaeser case study highlights how community involvement and partnering with researchers, MDT and the LRC, have recently resulted in the community beginning to negotiate alternative management approaches, participating in discussions on management processes which affect their livelihoods, and challenging the *status quo* in order to maintain their access. The 2005 'phasing out' policy provision and 2008 OEMP process have been at the core of the research partnership activities and have resulted in fishers and the OVV lodging their objections in the forms of letters, participating at meetings and workshops, and initiating change in the governance system of this fishery. Outcomes from the Ebenhaeser case study, in particular, emphasise how local resource users (with support from NGOs, legal entities and researchers) are increasingly drawing on powerful concepts, including reference to universal human rights – which may be based on international instruments such as the UN Declaration of Human Rights (UN 1948) and legal instruments such as the Constitution – to facilitate rights recognition.

Petersen (2008) notes that NGOs in South Africa have, during the anti-apartheid struggle and more recently, combined with legal entities to push for greater equity and rights for citizens. This raises an important aspect associated with social justice and an understanding of (i) the historical role of government, (ii) the development of laws and policies and post-apartheid reforms, and (iii) their implementation in the South African context (Hauck 2008). Two important aspects of social justice were visited in this chapter. The first was based on recognition and protection of the customary practices of local communities. Here, it was emphasised that fishers observe these practices as legitimate and consequently demand that they are recognised and respected. Formal laws that undermine aspects associated with these practices are disregarded, and 'informal' fishing bears relevance to these actions. The second aspect related to social justice was based on realising basic rights (including access to food and food security, as well as identity and culture) for sustaining livelihoods. As many small-scale fisher livelihoods face varying levels of vulnerability, coupled with few alternative economic opportunities, small-scale fishers in South Africa rely heavily on fisheries resources for food security and income (Sowman *et al.* 2008; Cardoso *et al.* 2005). Chuenpagdee *et*

al. (2005:33) adds weight to this dependency by noting that “social justice is directly related to power and poverty and in order for fishers to make a living with no alternatives sources of employment, the only response is for fishers to increase their fishing effort”. Therefore, it is fundamental that recognition of access to a secure form of livelihood is achieved in small-scale fisheries (Hauck 2009). Until this is realised, local resource users will remain oblivious to formal laws and policies governing fisheries and will defend and exercise perceived traditional and customary practices, even if deemed illegal.

8.8 SUMMARY

The aim of this chapter was to consolidate and analyse the empirical information that has emerged from the case study research and to unpack the key processes and mechanisms that are relevant for access in small-scale fisheries in South Africa. In doing this, it has been important to reflect on theory and practice when analysing the mechanisms that local resource users harness, as well as the relevant processes that influence access mechanisms employed in small-scale fisheries. Key to this understanding has been to emphasise the role of governance processes and interactions and how these influence access in small-scale fisheries, which are already regarded as dynamic and complex systems.

The revised conceptual framework has highlighted key access mechanisms identified in this study, and has emphasised that an understanding of access depends not only on the local context, but also on the external factors which may be associated with international and national (which includes socio-political) contexts. The distinct categories of rights-based (direct) and structural and relational mechanisms (indirect), as outlined by Ribot and Peluso (2003), were found to overlap, and in the context of this study, some of these were applicable, but not all were found to be relevant for the small-scale fisheries context of South Africa. Key mechanisms highlighted by the case studies indicated that while formal rights are acknowledged, customary practices assume great value and importance to local resource users, who regard these as legitimate. The overlapping nature of access mechanisms is illustrated by the role of knowledge, the manner in which knowledge systems have emerged as a result of access, and how local resource users stake their identity and culture through access mechanisms. By drawing on various aspects of knowledge and culture, local resource users have found value in continuing to highlight their claims for access by forming networks and using these mechanisms to gain and maintain access.

CHAPTER NINE

CONCLUSION

9.1 INTRODUCTION

Over the last few decades, new ways of conceptualising and analysing access to natural resources have emerged (Ribot 2008; Ribot & Peluso 2003; Leach *et al.* 1999). The need for new ‘ways’ to analyse such access was borne out of the fact that the predominant conceptualisation of access has been rooted within the property rights discourse and, consequently, focussed largely on the role of property rights and how these formal rights enable those who hold them to benefit, while others sought formal recognition for such rights in order to benefit from access. As a result of such a narrow conceptualisation of access, this notion did not consider the range of mechanisms and processes that may play an equally important role in determining access and how resource users are able to gain, maintain or control access and therefore derive benefits. The aim of this study was to contribute to an expanded view of access by developing a conceptual framework, based on empirical research, to better understand the range of access mechanisms that are harnessed as well as key processes that influence access. To achieve this, the study focussed on two small-scale fisheries in South Africa, a sector that has been neglected historically in South Africa and worldwide. What the findings from the study provide is an opportunity to explore the diverse and, in some cases, overlapping mechanisms of access, as well as the various governance processes and interactions (not only at local level) that are influencing access. While the study’s focus was on small-scale fisheries in South Africa, there is an opportunity for the findings and methodology to be applied more broadly, beyond the scope of the South African context.

A key outcome in documenting and analysing access in small-scale fisheries has been the recognition that governance processes and interactions play a fundamental role in influencing the mechanisms harnessed to benefit from access to resources. This research, in keeping with the growing literature on governance highlights that governance is more than management and influences activities and decisions at various levels (Jentoft 2007; Kooiman 2005). However, in particular, responses to challenges in governance are still largely characterised by top-down, technocratic, resource-oriented approaches which neglect to incorporate aspects related to fisher livelihoods and how governance and decisions affect access within these livelihoods. By neglecting these aspects, various implications arise which may threaten resource sustainability as well as the very livelihoods that depend thereon.

Small-scale fisheries therefore present particular challenges to managers in terms of their diversity and complexity (Chuenpagdee 2012; Isaacs 2012; Jentoft 2006; Berkes 2003) and these challenges are often related to management and the nature of decision-making processes governing the fishery. This

was highlighted in the results chapters as well as *Chapter Eight*. While aspects related to formal rights are relevant for access, what has become more evident in this research is the groundswell of reference to customary practices when articulating rights-based mechanisms of access. As a result, local resource users are challenging the state as the primary decision-making authority, as evident in resistance to and transgression against the current *status quo* in processes related to fisheries governance. These actions are reaffirmed by the on-going struggles and mistrust that exist between management and local resource users (Isaacs 2011; Hauck 2008; Sowman 2006), while access for many fisher communities remains insecure (Sowman *et al.* 2008; Cardoso *et al.* 2005). These challenges therefore highlight the importance of (i) identifying and analysing access beyond formal notions of property rights, (ii) considering the various mechanisms and processes that influence access trends, and (iii) establishing how best to understand these mechanisms while identifying the necessary approaches that will uphold basic human rights, ensure sustainability of the resource base as well as the livelihoods that depend thereon.

9.2 OVERVIEW OF THE STUDY

The overall aim of this study was to develop a conceptual framework for understanding access in small-scale fisheries in South Africa. To achieve this, the research was structured according to a number of objectives, including: (i) to review and describe the background of access to fisheries resources by local resource users within the South African context; (ii) to examine and document the context of access (to coastal and fisheries resources) at two case study sites, including the history of these fishery systems; (iii) to identify, describe and analyse the mechanisms of access that are harnessed in each of the case study sites, how these are strengthened to maintain or claim access, and to identify key mechanisms that enable access for local resource users, to assist in a better understanding of the nature of access as experienced in small-scale fisheries in South Africa; and (iv) to contribute to access theory by providing a conceptual framework for understanding and analysing access in small-scale fisheries in South Africa based on empirical research.

The conceptual foundation of this study was informed by the notion of access articulated by Ribot and Peluso (2003), i.e. access does not only focus on rights mechanisms, or the role of formal property rights in access, but is more encompassing and goes beyond analysing rights as the sole determinant in access. By investigating access, this study examined rights as a mechanism of access, but more importantly, it identified and analysed mechanisms that are equally important and that influences access. Other theoretical ideas that informed the approach for studying access included notions of entitlement, governance and the role of legal pluralism. The study adopted a grounded theory approach, and qualitative methods for data collection were employed. The collection and analysis of information was therefore conducted in a manner that ensured that the findings informed the

conceptual framework and contributed to an enhanced understanding of access in small-scale fisheries in the study sites. By analysing information as it emerged from the case studies, insights were provided into the access experienced in small-scale fisheries, while presenting the realities on the ground as they unfolded. While the findings emphasised an understanding of access that highlights the role of governance and interactions, and that these processes vastly influence mechanisms that local resource users harness in order to benefit from access, of equal importance was the attention drawn to new ways of conceptualising access, particularly from the perspective of local resource users. As access is concerned with the multiplicity of ways in which resource users are able to benefit from access (Ribot & Peluso 2003), it has been important to reflect on these mechanisms, as well as identify the most prominent mechanisms at play, within a specific context.

The various qualitative methods employed in this study have provided rich and valuable information. By employing these methods, it allowed access to be investigated from the perspective of local resource users. Employment of these qualitative methods allowed a mutual understanding of the research, assisted the researcher in gaining the trust of interviewees, and provided insights into fisher livelihoods and how access is experienced within these contexts. In addition to the various methods employed to gather primary data, the study also drew on secondary literature on access. Reflection on international discourses and literature, coupled with empirical results, had particular relevance in terms of contributing to the expanded view of access and the development of the conceptual framework.

9.3 RESEARCH RESULTS: AN EXPANDED VIEW OF ACCESS IN SMALL-SCALE FISHERIES

This study aimed to provide an enhanced understanding of access in small-scale fisheries beyond notions of formal rights. By drawing on the theoretical underpinnings of access and by developing a conceptual framework based on Ribot and Peluso's (2003) access theory, this framework has been developed to draw attention to the governance processes and interactions as well as key access mechanisms harnessed in small-scale fisheries. The application of the framework to the two case studies not only highlighted how governance processes influence access, but also emphasised key mechanisms that are emerging as fundamental features within the small-scale fisheries sector in South Africa. The contribution of the framework is summarised below.

The conceptual framework (Figure 23, overleaf) highlights governance processes and interactions and the key mechanisms of access that have emerged from empirical investigation in two small-scale fisheries in South Africa. As illustrated by the framework, international policy processes are highlighted as key governance processes which influence access. This is attributed to the fact that access (and in this study, access to fisheries resources) is influenced by processes occurring beyond

the confines of local or national boundaries. For instance, while local fishers may observe localised practices in terms of accessing and harvesting fisheries resources, their activities are subjected to rules, laws and obligations that stem from national systems governing fisheries resources. Furthermore, as a national state with obligations to international protocols governing fisheries resources, these states have a duty as members or signatories to uphold conventions and agreements, which in effect impact not only on a global scale, but locally as well. As fisheries resources are seen as global commons, these governance processes that occur at an international level, directly and indirectly affect access in fisheries-dependent nations worldwide.

In practice, these global governance processes shape policy rhetoric at the state level as well as management actions and decisions at the local level and consequently influence access mechanisms employed within a local context. At a national level, various factors (including the socio-political context) need to be understood, as well as the history that has shaped the current context. What is significant, especially in the South African context, is that discriminative historical policies and practices resulted in social and economic inequalities and the marginalisation of resource dependent communities. This resulted in skewed and unequal positions of various stakeholders within governance processes that affect natural resource access, use and management. These factors, including how decisions were made regarding the who gets access and who does not, are of key concern and need to be addressed and understood when analysing contemporary access, together with the question of why current governance approaches are being challenged. Therefore, in South Africa, access has not been adequately understood or considered in redress measures including rights allocations and the governance processes that regulate access (Tropp 2006). In the context of small-scale fisheries, in South Africa, access relates to rights allocation and the recognition of historical uses, the role of customary practices and the socio-cultural significance that access to such fisheries resources holds for local resource users.

A conceptual framework for understanding access to fisheries resources in small-scale fisheries

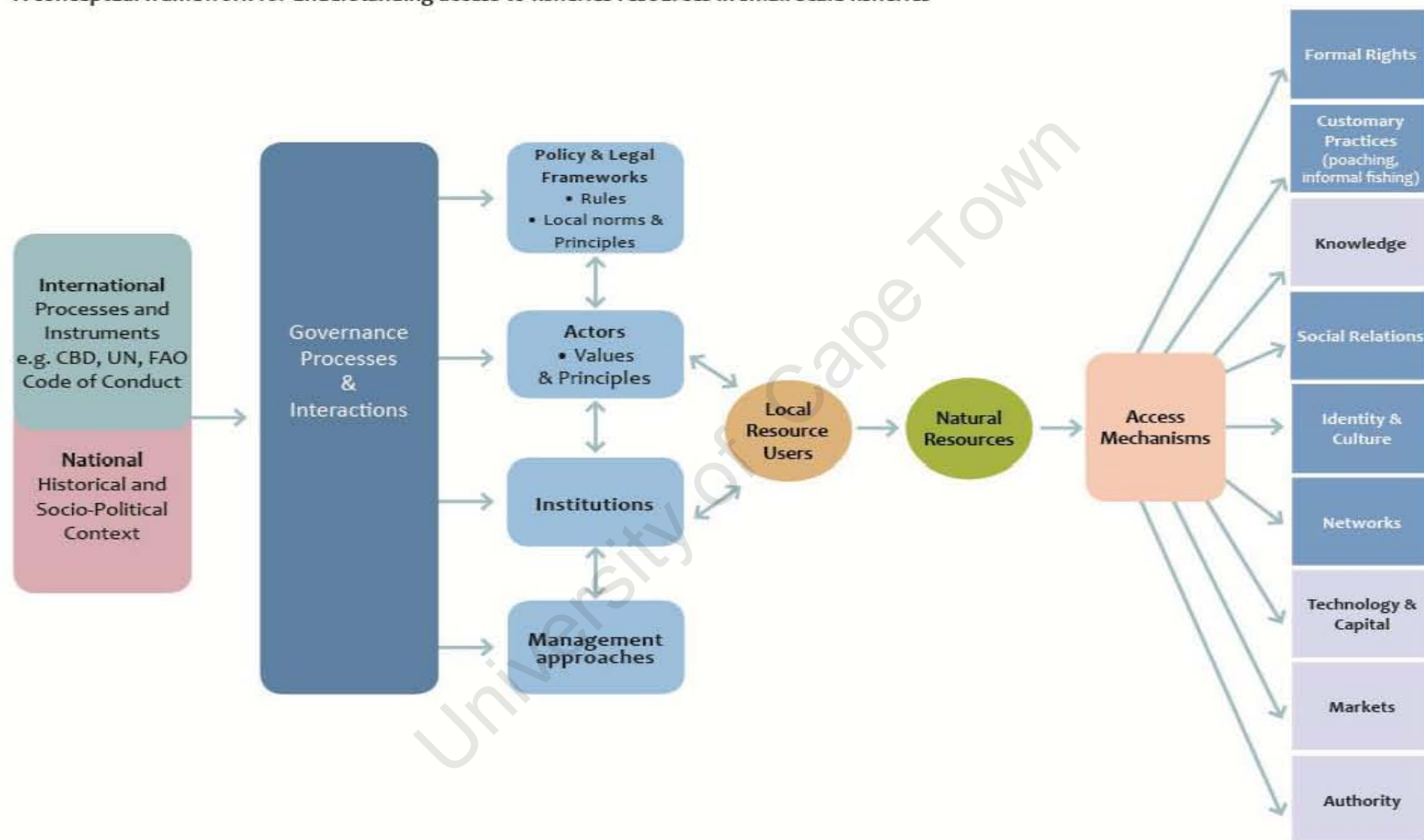


Figure 23. A conceptual framework for understanding access to fisheries resources in small-scale fisheries

Governance processes and interactions are highlighted in the framework as a key factor that transcends local, national and international contexts. As access to natural resources is usually understood in terms of who has rights and who controls these rights, the role of governance in fisheries has largely been associated with rules and controls (Andrew & Evans 2011). While the governance of fisheries also includes aspects related to access rights, as a result of the complex nature of these rights and claims from local resource users, it is important for governance processes to incorporate these claims. Management must therefore, as Berkes *et al.* (2001) stated, incorporate the biological and social attributes of a fishery as well as the role of different stakeholders in this arrangement, as these are fundamental to successful management. However, recognition of all stakeholders is not easily achieved. As Chuenpagdee *et al.* (2005) state: “despite the important impact on their livelihoods, coastal communities are often excluded from decision making processes and debates on their livelihood options such as access to resources they depend on.” As a result, such recognition in South African fisheries has not always taken priority, but efforts through the SSFP (DAFF 2012), for example, are aimed at filling these gaps. Given the importance of fisheries – especially small-scale fisheries – in the social and economic fabric of developing countries, it is essential that new management approaches are developed and adopted to address these inadequacies (Andrew & Evans 2011).

The role of formal rights has been and continues to be an important mechanism harnessed for gaining and maintaining access in small-scale fisheries. As emphasised in the case study chapters, these rights are acknowledged by local resource users. In Ebenhaeser, formal rights are important for maintaining access, while in the Covie, these rights have been awarded under recreational fishing conditions. What is striking in these two sites is the role of customary claims made to access fisheries resources: local resource users claim rights to resources due to customary and cultural practices and continue to stress the role that fishing plays within livelihoods. Therefore, while formal rights and laws enable access for some and are acknowledged by local resource users, reference to historic claims and customary and cultural practices provide legitimacy to local fishers to gain and maintain access to fisheries resources. In the cases investigated, these mechanisms played an important role in facilitating access to resources. The role of social relations in this study, as highlighted by Ribot & Peluso (2003), was found to be a key mechanism of access. Local resource users would therefore invest in relationships, negotiations, market based ties and various other social relations in order to gain or maintain access. As social relations are embedded in other access mechanisms identified, it is important to understand how local resource users are negotiating, articulating and drawing on multiple mechanisms to benefit from resources or lay claims to these. As highlighted in the conceptual framework, by focussing on various mechanisms and processes within a fishery, a better understanding of the context as well as the complexities of access in small-scale fisheries is gained.

From the findings of the case studies, knowledge has been indicated as an important mechanism for access. Not only does knowledge of the fishery enable local resource users to apply this to derive benefits from their activities, but these users also believe that their knowledge can contribute to the sustainability of resources and should be included in management decisions that affect the fishery and their livelihoods. Therefore, knowledge of the fishery system is integrally tied to fishers' identity and culture and these two access mechanisms are closely linked. Specifically, local resource users rely on aspects of their identity and culture to make claims to continue their livelihood practices. This is done not only to secure the socio-economic and ecological sustainability of the fishery, but to ensure continuity as a fisher community. Finally, the role of networks has been identified as a key mechanism of access where local resource users use relationships with a range of organisations and individuals to articulate their concerns for access and their rights to fisheries resources (whether actual or perceived). As highlighted in *Chapter Eight*, access to networks and collaborative efforts have been beneficial (especially in Ebenhaeser) to maintain access to fisheries resources. In South Africa, the establishment of networks and building of relationships between NGOs, researchers, lawyers and local communities, has resulted in local communities challenging the *status quo* and demanding changes in management and shifts in governance. Access to networks has not only enabled or maintained access for local resource users but has also created greater awareness of what local communities are entitled to and emphasised the need to acknowledge and uphold basic human rights. By investing and collaborating in networks, these social relations provide the necessary mechanism to see that these issues are brought to the attention of decision-makers and other stakeholders.

9.4 CONCLUDING REMARKS AND FUTURE RESEARCH

While the objective of this research was to develop a conceptual framework to better understand access in small-scale fisheries in two cases in South Africa, this framework has the potential to be applied to other fisheries and natural resource contexts in South Africa and elsewhere. This thesis concludes by drawing attention to three aspects of access that require consideration for future research in the South African small-scale fishery context and provide suggestions for the application of this conceptual framework to other contexts.

Firstly, one of the main gaps in small-scale fisheries research is related to aspects associated with history of the small-scale fisheries sector, as well as the role of customary tenure and systems. While the role of customary governance systems and rights has been more forthcoming in the land sector in South Africa, there has been little attention paid to the earlier histories of small-scale fisheries as well as the systems and laws that governed these fisheries. With the exception of work carried out by historians in South African fisheries (Van Sittert 2000; 1992), there is a clear gap in identifying the origins of these earlier fishery systems, how they evolved, and the role of customary norms and practices that have been transmitted and are currently used as mechanisms to substantiate

contemporary access practices and make claims for access. Furthermore, a better understanding of the histories of these fisheries and how cultural systems have developed and continue to influence access to fisheries resources, highlight the need to consider and respect different socio-legal systems that reflect the realities of these fishery systems.

Secondly, linked to calls and claims made to access fisheries resources, is the need for further research that investigates and analyses the extent to which post-apartheid reforms including the recently published SSFP address inequities in small-scale fisheries and enhance access to marine resources for local fishing communities. Within this research it would be beneficial to study the role of power in resource decision-making; possible questions may include: where is power located, how is it negotiated, and what changes in power relations may be observed in small-scale fisheries.

Thirdly, while this study aligned itself to the definition and conceptualisation of access articulated by Ribot and Peluso (2003), these authors do not apply the method of access analysis and its elements to a particular case study; hence, the aim of this study has been to address that gap. In Ribot and Peluso's (2003) access theory, the authors provide various elements or mechanisms they deem important for access and suggest a method of access analysis that enable various actors to derive benefits from resources. An important and interesting aspect that merits attention, therefore, would be to apply this expanded conceptual framework and follow the distribution of benefits in small-scale fisheries. This may draw attention to the role of different stakeholders involved in the fishery, their negotiation methods and power, as well as the role and benefits accrued to each.

Finally, while this revised conceptual framework has been developed to better understand access in small-scale fisheries in selected sites in South Africa, further application of the framework to other small-scale fisheries in South Africa and internationally is encouraged to assess its utility and appropriateness in different fishery contexts. This would assist in confirming whether the mechanisms identified are broadly applicable or whether there are other mechanisms that may be important in other contexts. Furthermore, application of the framework to other natural resource sectors such as forests, wildlife and water systems where local resource users are dependent on resources for food, livelihoods and cultural purposes may yield interesting results that can further inform the development of the access framework.

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ADDENDUM

Onderhoude met vissers/ huishoudings in Ebenhaeser/Covie

Datum Van Onderhoud

Naam

Plek van Onderhoud (gemeenschap naam)

1. Agtergrond

1.1 Wat is die deelnemer se geslag? [1] Vroulik [2] Manlik

1.2 Ouderdom

1.3 Skoolgaan agtergrond

[1] Nooit skool gegaan

[2] Primêre skool: Std.....

[3] Secondêr Skool: Std.....

[4] Naskool:

1.4 Huis tipe : _____

1.5 Toegang tot toilet: JA ☒ NEE ☐

1.6 Toegang tot water toevoer: JA NEE

| | | |
|-------------------------------|----|-----|
| 1.7 Toegang tot elektrisiteit | JA | NEE |
|-------------------------------|----|-----|

2. AGTERGROND OP MARIENE GEBRUIK

2.1 Vang u mariene bronne? (sirkel)

[1] JA [2] NEE

Indien NEE, het u in die verlede mariene bronne gevang en waar het dit plaasgevind?
Verduidelik

Hoekom vang u nie meer mariene bronne nie? Verduidelik

2.2 Het u 'n permit vir visvangs? Watter spesies? (Dui aan die spesie langs die permit. Ook, indien geen permit dui ook aan watter spesies word sonder permit gevang)

Kommersieel _____

Sport permit _____

Vrywaarings Permit _____

'Interim Relief Permit' _____

Geen permit _____

2.3 Hoeveel dae, min of meer, vang u vis? _____

Wat is die vangste (getalle, min of meer), op 'n goeie dag? _____

2.4 Hoeveel maande uit die jaar vang u vis? _____

2.5 Hoe dink u is die vlakke (gesondheid van die bron) in u area?

2.6 What sou u sê behels volhoubare visvangs aktiwiteite?

2.7 Is daar enige iemand anders wat met u werk? (bv: op u staat maak vir 'n inkomste)?

JA

NEE

Indien JA, hoeveel mense is dit? _____

2.8 Wat gebruik u vir 'n visvang? (Toerusting, tegnieke ens)

2.9 Vir wat word u vangste hoofsaaklik gebruik?

[1] Deel met bure

[2] Verkoop

[3] Om te eet

[4] Eet van dit maar verkoop meeste

[6] Ander gebruike (Dui aan)

Indien u verkoop, aan wie verkoop u?(Merk af)?

[1]Informele kopers in gemeenskap (Mense wat in gemeenskap woon, klein kafee, winkels ens)

[2] Informele kopers buite gemeenskap (toeriste, mense van buite wat in die gemeenskap kom)

[3]Georganiseerde kopers in die gemeenskap (ooreenkomste met mense in die gemeenskap)

[4] Georganiseerde kopers buite die gemeenskap (ooreenkomste met mense in die gemeenskap)

[5]Ander _____

2.10 Hoeveel inkomste maak u van u vangste?

Vars vis _____

Droë vis _____

Kreef _____

Ander _____

Historiese konteks

How lank is u al betrokke met visserye en visvangs aktiwiteite? _____

Hoe het u betrokke geraak?

Was u pa 'n visserman?

JA NEE

Was u oupa 'n visserman?

JA NEE

Sou u sê visvangs en verwante aktiwiteite was 'n deel van u opbrengs?

JA NEE

Hoe sou u die lewe van 'n visserman beskryf?

2. HUISHOUDELIKE EIENSKAPPE& INKOMSTE

2.1 Hoeveel mense woon in u huisgesin?

2.2 Hoeveel is ouer as 18 jaar binne die huisgesin?

2.3 Hoeveel mense is jonger as 16 in die huisgesin?

2.4 Hoeveel familie lede in die huisgesin is betrokke by visvangs of visvangsaktiwiteite?

2.5 Is daar enige ander natuurlike hulpbronne wat gebruik word om te help met 'n inkomste?

JA

NEE

Indien JA, WAT en WAAR word dit geoes, gevang ens?

2.6 Hoeveel dra die inkomste van ander natuurlike hulpbronne by tot u huishoudelike inkomste/
lewensbetaan?

2.7 Is die hoof van die huisgesin:

[1] Visserman (Vol of deelyds)

[2] Werk

[3] Pensioenaar

[4] Werk deelyds/Seison

[5] Werk nie

[6] Ander

2.8 Wat is die maandlikse huishoudelike inkomste (Sluit pensioen, toelae, ander bronne van inkomste in)

[1] Minder as R500

[2] R501-R1000

[3] R1001-R1500

[4] R1501-R2000

[5] R2000-R3000

[6] Meer as R3000

2.9 Op wat word die MEESTE van u inkomste gebruik?

[1] Koop kos

[2] Koop gereedskap en voorraad vir visvangs aktiwiteite

[3] Klere

[4] Skool fooie

[5] Skuld

[6] Ander, dui asb aan

3. HUIDIGE LEWENSBESTAAN OPSIES

3.1. Watter huidige aktiwiteite dra by tot u maandlikse inkomste (merk af)?

3.2. Bring enige van hierdie meer as helfte van die maandlikse inkomste in (merk met 'n *)

3.3. Dui aan watter aktiwiteit die belangrikste is in terme van maandlikse inkomste (1 die belangrikste)

Visvang/ (s) aktiwiteite

Gebruik van ander natuurlike hulpbronne

Werk (permanent)

Verkoop van vrugte/ groente

Vekoop van kleinvee (hoenders, skaap ens)

Werk by fabriek, gebou ens.

Toerisme

Seisoenale werk

Pensioen

Toelae (ongeskiks, kinder)

Ander (Dui asb aan)

5. ALTERNATIEWE/ HUIDIGE& LEWENSBESTAAN OPSIES

5.1 Dink u dat visvangs 'n standvastige vorm is van inkomste?

JA

NEE

Hoekom dink (of dink u nie) so?

5.2 Hoe sou u visvangs met ander tipe werk vergelyk?

5.3 Indien u dieselfe inkomste kon maak in 'n ander beroep, sou u visvangs opgee?

JA

NEE

Hoekom sê u ja of nee? Verduidelik asb

Indien JA, wat sou u graag wou doen?

5.4 Is daar enige ander ekonomiese geleenthede beskikbaar in u gemeenskap wat u van weet en sou betrokke by wou raak?

[1] JA

[2] NEE

5.5 Dink u dat die regering (plaaslik en nationaal) 'n rol om te speel in identifiseering en ondersteuning van geleenthede vir vissers/ gemeenskap?

JA (Indien JA, Verduidelik asb hoe hulle betrokke moet wees)

NEE

5.7 Wat sou u sê is u grootse of beste vaardighede wat u het wat u moontlik kan help om betrokke te raak by ander ekonomiese geleenthede?

5.8 Wat dink u sou (sal) die grootste stuikelblok wees of probleem wees wat (sal) verhoed dat u betrokke kan raak in ander ekonomiese aktiwiteite?

5.9 Is daar enige iets wat u sou doen om dit te oorkom?

University of Cape Town